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Presidential Documents

Title 3—

The President

Proclamation 10073 of September 11, 2020

Minority Enterprise Development Week, 2020

By the President of the United States of America

A Proclamation

Each day, more than one million minority-owned employers in the United States contribute to the economic vitality of our Nation. These incredible enterprises uplift their surrounding communities and help fuel the futures, livelihoods, and dreams of Americans throughout the country. During Minority Enterprise Development Week, we celebrate the contributions of our great minority-owned businesses and reaffirm our commitment to supporting their continued growth, development, and success.

Since my first day in office, I have been committed to fostering an environment where all businesses, including minority-owned businesses, can thrive. The historic 2017 Tax Cuts and Jobs Act provided for the biggest tax cuts and reforms in American history, benefitting all Americans. This legislation also created Opportunity Zones, a landmark program that encourages investment in distressed communities and creates jobs for those who are most in need of opportunities for economic empowerment. My Administration has also cut burdensome regulations at an unprecedented rate, loosening Government restraints on growth and allowing minority-owned businesses to thrive. To reinforce our commitment to these critical enterprises, in April of this year, the Department of Commerce, through the Minority Business Development Agency (MBDA), announced the creation of the Minority Business Enterprise Inner City Innovation HUBs, which will award $2.8 million over 2 years to support minority-owned businesses. Through this initiative, we are helping to fund and sustain minority-owned startups, including those that support digital innovation, machine learning and artificial intelligence, and technology transfer.

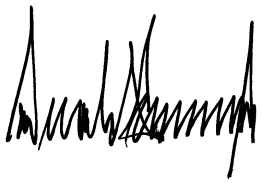
My Administration has also been relentlessly committed to helping minority-owned businesses recover from the economic hardships brought on by the coronavirus pandemic. As part of the historic Coronavirus Aid, Relief, and Economic Security (CARES) Act, which I signed into law in March of this year, the Federal Government has allocated $10 million in supplemental funding to MBDA Business Centers and minority chambers of commerce to provide training and advising services for minority business enterprises, empowering them to be leaders in our economic recovery. In addition, the nearly 9,000 Opportunity Zones created by the Tax Cuts and Jobs Act have produced $75 billion in investment for countless minority neighborhoods throughout the United States. My Administration understands that supporting minority businesses promotes a strong national economy, and we will do everything in our power to assist minority-owned businesses as our Nation continues our economic resurgence.

This week and every week, we celebrate the vast contributions minority-owned businesses make to our great country. As President, I will always proudly stand by minority entrepreneurs and their businesses. My Administration will continue to promote their interests and decrease regulatory burdens to help them unleash their full potential.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 13 through

September 19, 2020, as Minority Enterprise Development Week. I call upon the people of the United States to observe this week with programs, ceremonies, and activities to recognize the many contributions of American minority business enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–21114
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Presidential Documents

Proclamation 10074 of September 11, 2020

Prescription Opioid and Heroin Epidemic Awareness Week, 2020

By the President of the United States of America

A Proclamation

During Prescription Opioid and Heroin Epidemic Awareness Week, we reaffirm our unwavering commitment to ending the opioid crisis in our country, and we pledge to help our friends, family, and colleagues with addiction as they work toward a drug-free life. Addiction undercuts human personal potential, damages families, and disrupts relationships. This month, and every month, we must continue to raise awareness about the dangers of opioid misuse and resolve to build a healthier and happier Nation.

Since my first day in office, my Administration has taken aggressive action to confront and dismantle the driving forces behind the opioid crisis. In October 2017, we declared the opioid crisis a public health emergency, and in 2018, we secured $6 billion in new funding to fight the opioid crisis. Most recently, I signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which strengthened these efforts by providing millions of dollars in emergency grant funding to healthcare providers treating those with substance use disorders. Additionally, to ensure that access to addiction support services remains uninterrupted, I eased the regulatory burdens on the Drug Enforcement Administration and the Department of Health and Human Services, which are now ensuring greater access to treatment by expanding telehealth options.

To fight over prescribing, a significant contributor to the widespread opioid addiction, my Administration launched the Safer Prescribing Plan in 2018, which built on our early progress and set an ambitious goal of cutting opioid prescription fills by one-third within 3 years. This initiative is a major reason why the total amount of opioid prescriptions filled in America has dropped by 31 percent since I took office. We have also developed partnerships between the Office of National Drug Control Policy, the Truth Initiative, and the Ad Council to educate young adults about the dangers of misusing opioids. These efforts are preventing Americans from falling victim to the potent and dangerous grip of opioid addiction.

My Administration is also taking decisive action to keep dangerous drugs out of our country. Synthetic opioids are extremely deadly and generally originate outside of the United States. Our Nation's law enforcement officers are working night and day to keep this poison from crossing our borders. In 2018 alone, they seized almost 5,000 pounds of fentanyl at our border—enough to kill 1.2 billion individuals, the equivalent of every American four times over. Although we have made great progress through these actions, my Administration remains as committed as ever to using the power of Federal law and the expertise of our Nation's dedicated law enforcement officials to prevent the illegal importation and distribution of opioids, which could otherwise devastate countless American families.

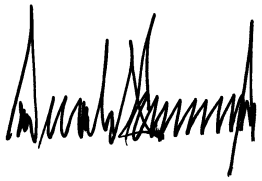
To help those already struggling with addiction, my Administration is working to champion evidence-based treatments and provide recovery support resources. In 2018, I signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, which uses a whole-of-government approach to better monitor

prescribing, improve treatment, prevent addiction, and curb the use of illegal drugs. We have also awarded nearly $50 million in planning grants to 15 States to increase the capacity of Medicaid providers to deliver substance use disorder treatment and recovery services. And beginning in January of this year, Medicare began covering services for its beneficiaries at opioid treatment programs. Together, these efforts will help expand treatment access and provide crucial support to those who need it.

This Prescription Opioid and Heroin Epidemic Awareness Week, we redouble our efforts to defeat our Nation's opioid crisis. We can never forget the hundreds of thousands of lives lost, nor the families forever altered due to this scourge. We will always support those around us who are suffering from addiction, encourage those struggling in private to reach out for help, and celebrate those who have found a pathway from addiction to recovery. Together, we will continue to build awareness and work toward a healthier, safer society where every community, family, and individual can flourish.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 13 through September 19, 2020, as Prescription Opioid and Heroin Epidemic Awareness Week. I call upon my fellow Americans to observe this week with activities of awareness and remembrance of the lives lost and commitments to continue the fight.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–21116
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Presidential Documents

Proclamation 10075 of September 11, 2020

National Historically Black Colleges and Universities Week, 2020

By the President of the United States of America

A Proclamation

For more than 180 years, our Nation's Historically Black Colleges and Universities (HBCUs) have exhibited remarkable excellence in higher education and served as engines of opportunity and advancement for thousands of Black Americans. During National Historically Black Colleges and Universities Week, we celebrate the achievements of HBCUs and their students and pledge our continuing support to the nearly 300,000 individuals currently pursuing their dreams at HBCUs throughout the United States.

For nearly two centuries, HBCU graduates have profoundly shaped American life and culture. In science and technology, HBCU graduates have led the way in innovation, like engineer and inventor Otis Boykin, who held more than 20 patents during his lifetime, including for a wire precision resistor used in radios and televisions, and for a control unit used in pacemakers that helped save countless lives. From thought leaders like Booker T. Washington and civil rights heroes like Martin Luther King, Jr., to great legal minds like Thurgood Marshall and renowned authors like James Weldon Johnson, our Republic is more vibrant because of HBCUs and their students.

My Administration will always stand beside these wonderful colleges and universities as they pursue their mission to provide their students with a high-quality education. In order to further promote the success of HBCUs in the years to come, I signed an Executive Order in February of 2017 on the White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities. This action established the President's Board of Advisors on HBCUs, and as a result, 32 Federal departments and agencies now have plans in place to help HBCUs secure available Federal resources and opportunities. Additionally, my Administration recently released a Framework for the Development of a Federal HBCU Competitiveness Strategy, further facilitating productive partnerships between HBCU students and faculty members and public and private-sector entities.

This year, National HBCU Week also coincides with the 150th anniversary of two of South Carolina's great historically black institutions: Allen University and Benedict College. Our Nation joins these schools in celebrating this significant milestone and their incredible legacies. Last year, at Benedict College, I was proud to highlight an increase of more than 13 percent in Federal funding for HBCUs under my Administration. In addition, I signed into law the FUTURE Act, which reauthorized more than $85 million in funding for HBCUs, securing permanent funding for our Nation's historically black institutions and helping ensure their financial security for future generations.

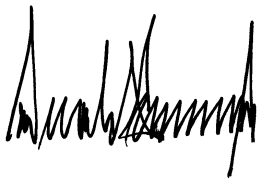
My Administration has also continued to prioritize HBCUs during the coronavirus pandemic, and we remain committed to helping them safely reopen for in-person classes. As part of this effort, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which I signed into law in March of this year, provided $930 million in higher education emergency relief funds for HBCUs. During these challenging times, my Administration is working to meet the needs of these great institutions and their students

as they seek to safely reopen their doors. We know full well the important role they will play in our ongoing national recovery.

HBCUs help empower young Americans from all backgrounds to achieve their American Dream. This week, we proudly reaffirm our support for HBCUs and pledge to continue to promote their success and provide support to their vital educational mission.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 20 through September 26, 2020, as National Historically Black Colleges and Universities Week, and further proclaim September 21, 2020, as National HBCU Colors Day. I call upon educators, public officials, professional organizations, corporations, and all Americans to proudly don institutional colors and observe this week and day with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities and to boldly, joyfully, and proudly don institutional colors.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–21126
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Presidential Documents

Executive Order 13948 of September 13, 2020

Lowering Drug Prices by Putting America First

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose*. Americans pay more per capita for prescription drugs than residents of any other developed country in the world. It is unacceptable that Americans pay more for the exact same drugs, often made in the exact same places. Other countries' governments regulate drug prices by negotiating with drug manufacturers to secure bargain prices, leaving Americans to make up the difference—effectively subsidizing innovation and) lower-cost drugs for the rest of the world. The Council of Economic Advisers has found that Americans finance much of the biopharmaceutical innovation that the world depends on, allowing foreign governments, many of which are the sole healthcare payers in their respective countries, to enjoy bargain prices for such innovations. Americans should not bear extra burdens to compensate for the shortfalls that result from the nationalized public healthcare systems of wealthy countries abroad.

In addition to being unfair, high drug prices in the United States also have serious economic and health consequences for patients in need of treatment. High prices cause Americans to divert too much of their scarce resources to pharmaceutical treatments and away from other productive uses. High prices are also a reason many patients skip doses of their medications, take less than the recommended doses, or abandon treatment altogether. The consequences of these behaviors can be severe. For example, patients may develop acute conditions that result in poor clinical outcomes or that require drastic and expensive medical interventions.

In most markets, the largest buyers pay the lowest prices, but this has not been true for prescription drugs. The Federal Government is the largest payer for prescription drugs in the world, but it pays more than many smaller buyers, including other developed nations. When the Federal Government purchases a drug covered by Medicare—the cost of which is shared by American seniors who take the drug and American taxpayers—it should insist on, at a minimum, the lowest price at which the manufacturer sells that drug to any other developed nation.

Sec. 2. *Policy*. (a) It is the policy of the United States that the Medicare program should not pay more for costly Part B or Part D prescription drugs or biological products than the most-favored-nation price.

(b) The ''most-favored-nation price'' shall mean the lowest price, after adjusting for volume and differences in national gross domestic product, for a pharmaceutical product that the drug manufacturer sells in a member country of the Organisation for Economic Co-operation and Development (OECD) that has a comparable per-capita gross domestic product.

Sec. 3. *Payment Model on the Most-Favored-Nation Price in Medicare Part B*. To the extent consistent with law, the Secretary of Health and Human Services shall immediately take appropriate steps to implement his rulemaking plan to test a payment model pursuant to which Medicare would pay, for certain high-cost prescription drugs and biological products covered by Medicare Part B, no more than the most-favored-nation price. The model would test whether, for patients who require pharmaceutical treatment, paying no more than the most-favored-nation price would mitigate poor clinical outcomes and increased expenditures associated with high drug costs.

Sec. 4. *Payment Model on the Most-Favored-Nation Price in Medicare Part D.* To the extent consistent with law, the Secretary shall take appropriate steps to develop and implement a rulemaking plan, selecting for testing, consistent with section 1315a(b)(2)(A) of title 42, United States Code, a payment model pursuant to which Medicare would pay, for Part D prescription drugs or biological products where insufficient competition exists and seniors are faced with prices above those in OECD member countries that have a comparable per-capita gross domestic product to the United States, after adjusting for volume and differences in national gross domestic product, no more than the most-favored-nation price, to the extent feasible. The model should test whether, for patients who require pharmaceutical treatment, paying no more than the most-favored-nation price would mitigate poor clinical outcomes and increased expenditures associated with high drug costs.

Sec. 5. *Revocation of Executive Order*. The Executive Order of July 24, 2020 (Lowering Drug Prices by Putting America First), is revoked.

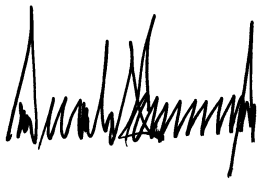
Sec. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 13, 2020.

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Rules and Regulations

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Wednesday, September 23, 2020

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

8 CFR Chapter I

19 CFR Chapters I and IV

Ratification of Department Actions

AGENCY: Department of Homeland Security (DHS).

ACTION: Ratification.

SUMMARY: The Department of Homeland Security, through its Acting Secretary, is publishing notification of the ratification of a number of previous actions by the Department. The attached ratification provides the public with certainty, by resolving any potential defect in the validity of those actions.

DATES: The ratification was signed on September 17, 2020, and relates back to the original date of each action that it ratifies.

FOR FURTHER INFORMATION CONTACT: Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528, (202) 447–3623.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security, through its Acting Secretary, is ratifying a number of previous actions by the Department. The Department continues to maintain that prior succession orders designating Chad Wolf as Acting Secretary are valid and that Acting Secretary Wolf had the authority to take the actions being ratified in the attached appendix. The Department issued this ratification and is now publishing it in the **Federal Register** out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified actions would be invalid absent the ratification.

Ian Brekke, Deputy

General Counsel, U.S. Department of Homeland Security.

Appendix

BILLING CODE 9112–FP–P

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

RATIFICATION OF ACTIONS TAKEN BY THE ACTING SECRETARY OF HOMELAND SECURITY

I am affirming and ratifying each of my delegable prior actions as Acting Secretary, *see* 5 U.S.C. § 3348(a)(2), (d)(2), out of an abundance of caution because of a recent Government Accountability Office (GAO) opinion, *see* B-331650 (Comp. Gen., Aug. 14, 2020), and recent actions filed in federal court alleging that the November 8, 2019, order of succession issued by former Acting Secretary Kevin McAleenan was not valid. *See, e.g.*, *Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 920 F.3d 1, (D.C. Cir. 2019) ("We have repeatedly held that a properly appointed official's ratification of an allegedly improper official's prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment" (quote marks omitted) (second alteration in original)).

When former Acting Secretary McAleenan resigned on November 13, 2019, I began serving as Acting Secretary in accordance with the order of succession former Acting Secretary McAleenan designated on November 8, 2019, under the Homeland Security Act (HSA), 6 U.S.C. § 113(g)(2) (enacted on Dec. 23, 2016, Pub. L. 114–328, div. A, title XIX, § 1903(a), 130 Stat. 2672). That designation of the order of succession followed former Secretary Kirstjen Nielsen's April 9, 2019, designation of the order of succession, also pursuant to section 113(g)(2), which resulted in Mr. McAleenan serving as Acting Secretary when former Secretary Nielsen resigned.

The Secretary of Homeland Security's authority to designate the order of succession under section 113(g)(2) is an alternative means to the authority of the Federal Vacancies Reform Act (FVRA) to designate an Acting Secretary of Homeland Security. Section 113(g)(2) provides that it applies "notwithstanding" the FVRA; thus, when there is an operative section 113(g)(2) order of succession, it alone governs which official shall serve as Acting Secretary. Accordingly, I properly began serving as Acting Secretary on November 13, 2019. Because section 113(g)(2) authorizes the designation of an Acting Secretary "notwithstanding chapter 33 of title 5" in its entirety, section 113(g)(2) orders addressing the line of succession for the Secretary of Homeland Security are subject to neither the FVRA provisions governing which officials may serve in an acting position, *see* 5 U.S.C. § 3345, nor FVRA time constraints, *see id.* § 3346.

On September 10, 2020, President Donald J. Trump nominated me to serve as Secretary of Homeland Security. Because I have been serving as the Acting Secretary pursuant to a section 113(g)(2) order of succession, the FVRA's prohibition on a nominee's acting service while his or her nomination is pending does not apply, and I remain the Acting Secretary notwithstanding my nomination. *Compare* 6 U.S.C. § 113(a)(1)(A) (cross-referencing the FVRA without the "notwithstanding" caveat), *with id.* § 113(g)(1)–(2) (noting the FVRA

provisions and specifying, in contrast, that section 113(g) provides for acting secretary service "notwithstanding" those provisions); *see also* 5 U.S.C. § 3345(b)(1)(B) (restricting acting officer service under section 3345(a) by an official whose nomination has been submitted to the Senate for permanent service in that position).

That said, there have been recent challenges to whether my service is invalid, which rest on the erroneous contentions that the orders of succession issued by former Secretary Nielsen and former Acting Secretary McAleenan were invalid. If those contentions were legally correct—meaning that neither former Secretary Nielsen nor former Acting Secretary McAleenan would have issued a valid section 113(g)(2) order of succession—then the FVRA would apply and Executive Order 13753 (published on December 14, 2016, under the FVRA) would continue to govern the order of succession for the Secretary of Homeland Security.

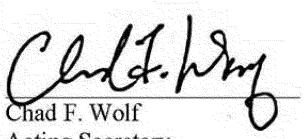
The FVRA provides an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. In that alternate scenario, under the authority of the FVRA, 5 U.S.C. § 3345(a)(2), when the President submitted my nomination, Peter Gaynor, the Administrator of the Federal Emergency Management Agency (FEMA), would have become eligible to exercise the authority of the Secretary temporarily in an acting capacity. This is because Executive Order 13753 pre-established the President's succession order for the Department when the FVRA applies,[1] Mr. Gaynor would be the most senior official eligible to serve as the Acting Secretary under that succession order, and my nomination restarted the FVRA's time limits, 5 U.S.C. § 3346(a)(2).

Out of an abundance of caution and to minimize any disruption to the Department of Homeland Security and to the Administration's Homeland Security mission, on September 10, 2020, Mr. Gaynor exercised any authority of the position of Acting Secretary that he had to designate an order of succession under 6 U.S.C. § 113(g)(2) (the "Gaynor Order"). Mr. Gaynor re-issued the order of succession established by former Acting Secretary McAleenan on November 8, 2019, and placed the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once the Gaynor Order was executed, it superseded any authority Mr. Gaynor may have had under the FVRA and confirmed my authority to continue to serve as the Acting Secretary. Thus, in addition to the authority I possess pursuant to the November 8, 2019, order of succession effectuated by former Acting Secretary McAleenan, the Gaynor Order alternatively removes any doubt that I am currently serving as the Acting Secretary.

I have full and complete knowledge of the contents and purpose of any and all actions taken by me since November 13, 2019. Among my prior actions that I am ratifying is a Final Rule I approved and issued in the Federal Register at 85 Fed. Reg. 46,788 (Aug. 3, 2020). Former Acting Secretary McAleenan issued a Notice of Proposed Rulemaking (NPRM) for that Final Rule at 84 Fed. Reg. 62,280 (Nov. 14, 2019), and I am familiar with that NPRM having previously approved the Final Rule. I believe that all of the aforementioned actions as Acting

[1] Executive Order 13753, Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg. 90667 (Dec. 14, 2016).

Secretary since November 13, 2019, were legally authorized and entirely proper. However, to avoid any possible uncertainty and out of an abundance of caution, pursuant to the Secretary of Homeland Security's authorities under, *inter alia*, the Homeland Security Act of 2002, Pub. L. No 207-296, as amended, and 5 U.S.C. §§ 301-302, I hereby affirm and ratify any and all actions involving delegable duties that I have taken from November 13, 2019, through September 10, 2020, the date of the execution of the Gaynor Order, and I hereby affirm and ratify the above noted November 14, 2019 NPRM originally approved by former Acting Secretary McAleenan.



Chad F. Wolf
Acting Secretary

September 17, 2020
Date

[FR Doc. 2020–21055 Filed 9–21–20; 11:15 am]
BILLING CODE 9112–FP–C

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2671–20; DHS Docket No. USCIS–2020–0017]

RIN 1615–AC59

Asylum Interview Interpreter Requirement Modification Due to COVID–19

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: This rule temporarily (for 180 days) amends existing Department of Homeland Security (DHS) regulations to provide that asylum applicants who cannot proceed with the interview in English are no longer required to provide interpreters at the asylum interview but rather must ordinarily proceed with DHS-provided telephonic interpreters.

DATES: This rule is effective September 23, 2020, through March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2140; telephone 202–272–8377 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Legal Authority To Issue This Rule and Other Background

A. Legal Authority

The Secretary of Homeland Security (Secretary) publishes this temporary final rule pursuant to his authorities concerning asylum determinations. The Homeland Security Act of 2002 (HSA), Public Law 107–296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA amended the Immigration and Nationality Act (INA or the Act), charging the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' INA 103(a)(1), 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions ''necessary for carrying out'' the immigration laws, including the INA, *id.* 1103(a)(3). The HSA also transferred to DHS responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers determine, in the first instance, whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9. With limited exception, the Department of Justice Executive Office for Immigration Review has exclusive authority to adjudicate asylum applications filed by aliens who are in removal proceedings. *See* INA 103(g), 240; 8 U.S.C. 1103(g), 1229a. This broad division of functions and authorities informs the background of this rule.

B. Legal Framework for Asylum

Asylum is a discretionary benefit that generally can be granted to eligible aliens who are physically present or who arrive in the United States, irrespective of their status, subject to the requirements in section 208 of the INA, 8 U.S.C. 1158, and implementing regulations, *see* 8 CFR pts. 208, 1208.

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), imposes several mandates and procedural requirements for the consideration of asylum applications. Congress also specified that the Attorney General and Secretary of Homeland Security ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). In sum, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to regulate consideration of asylum applications. USCIS regulations promulgated under this authority set agency procedures for asylum interviews, and require that applicants unable to proceed in English ''must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent.'' 8 CFR 208.9(g). This requirement means that all asylum applicants who cannot proceed in English must bring an interpreter to their interview, posing a serious health risk in the current climate.

Accordingly, this temporary rule will address the international spread of pandemic Coronavirus Disease 2019 (COVID–19) by seeking to slow the transmission and spread of the disease during asylum interviews before USCIS asylum officers. To that end, this temporary rule will require in certain instances aliens to be interviewed for this discretionary asylum benefit using competent government interpreters.

C. The COVID–19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19.[1] On March 13, 2020, President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus in the United States.[2] The President's proclamation declared that the emergency began in the United States on March 1, 2020.

COVID–19 is a communicable disease caused by a novel (new) coronavirus, SARS-CoV–2 and appears to spread easily and sustainably within communities.[3] The virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may also transfer through contact with surfaces or objects contaminated with these droplets.[4] There is also evidence of presymptomatic and asymptomatic transmission, in which an individual infected with COVID–19 is capable of spreading the virus to others before exhibiting symptoms or without ever exhibiting symptoms, respectively.[5] The ease of transmission presents a risk of a surge in hospitalizations for COVID–19, which would reduce available hospital capacity.

Symptoms include fever, cough, and shortness of breath, and typically appear

[1] HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020).

[2] Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020). See also *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/* (last visited Mar. 25, 2020).

[3] CDC, How COVID–19 Spreads (Jun. 16, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.*

[4] Id.

[5] CDC, Public Health Guidance for Community-Related Exposure (Jul. 31, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.*

2 to 14 days after exposure.[6] Manifestations of severe disease have included severe pneumonia, acute respiratory distress syndrome, septic shock, and multi-organ failure.[7] According to the World Health Organization (WHO), approximately 3.4% of reported COVID–19 cases have resulted in death globally.[8] This mortality rate is higher among older adults or those with compromised immune systems.[9] Older adults and people who have severe chronic medical conditions such as serious heart conditions and lung disease are also at higher risk for more serious COVID–19 illness.[10]

As of July 31, 2020, there were approximately 17,106,007 cases of COVID–19 globally, resulting in approximately 668,910 deaths; approximately 4,405,932 cases have been identified in the United States, with new cases being reported daily, and approximately 150,283 reported deaths due to the disease.[11]

Unfortunately, there is currently no vaccine against COVID–19. Treatment is currently limited to supportive care to manage symptoms. Hospitalization may be required in severe cases and mechanical respiratory support may be needed in the most severe cases. Testing is available to confirm suspected cases of COVID–19 infection. At present, the time it takes to receive results varies, based on type of test used, laboratory capacity, and geographic location, among other factors.[12]

[6] CDC, Coronavirus Disease 2019 (COVID–19) (Mar. 16, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html.*

[7] CDC, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID–19) (Mar. 7, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html.*

[8] WHO Director-General's Opening Remarks at the Media Briefing on COVID–19 (Mar. 3, 2020), *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020.*

[9] CDC, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID–19) (Mar. 7, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html.*

[10] CDC, People Who Are at Higher Risk for Severe Illness (Mar. 22, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html.*

[11] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—193 (July 31, 2020), *available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200731-covid-19-sitrep-193.pdf?sfvrsn=42a0221d_2;* CDC, Coronavirus Disease 2019 (COVID–19): Cases in U.S. (July 31, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[12] CDC, Test for Current Infection (Jul. 23, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html.*

Many states and businesses are beginning the initial phases of reopening, yet there are numerous challenges. The CDC has posted guidance for workplaces who plan to reopen, which include: Ensuring social distancing, such as installing physical barriers, modifying workspaces, closing communal spaces, staggering shifts, limit travel and modify commuting practices.[13]

II. Purpose of This Temporary Final Rule

In light of the pandemic and to protect its workforce and help mitigate the spread of COVID–19, USCIS temporarily suspended all face-to-face services with the public from March 18, 2020 to June 4, 2020. In an effort to promote safety as USCIS continues to reopen offices to the public for in-person services and resume necessary operations, DHS has determined, for 180 days, to no longer require asylum applicants who are unable to proceed with the interview in English to provide an interpreter. Rather, asylum applicants will ordinarily be required to proceed with government-provided telephonic contract interpreters so long as they speak one of the 47 languages found on the Required Languages for Interpreter Services BPA/GSA Language Schedule (''GSA Schedule''). If the applicant does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, the applicant will be required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA schedule).

By providing telephonic contract interpreters, the risk of contracting COVID–19 for applicants, attorneys, interpreters, and USCIS employees will be reduced by requiring fewer people to attend asylum interviews in person. In addition, it may alleviate an applicant's challenge in securing an interpreter. USCIS may be able to conduct additional asylum interviews because there will be more physical office space that will not be occupied by interpreters since all parties temporarily sit in separate offices during the interview during the COVID–19 pandemic to mitigate potential exposure. Therefore, currently, one asylum interview can take up to 4 interviewing offices. DHS believes this approach will support the agency in reopening operations to the public for in-person services, while protecting the workforce, stakeholders, and communities to the greatest extent possible.

[13] CDC, Reopening Workplaces During the COVID–19 Pandemic, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html;* CDC, Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes, *https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html.*

USCIS contractor-provided telephonic interpreters must be at least 18 years of age and pass a security and background investigation by the USCIS Office of Security and Integrity (''OSI''). They cannot be the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; a representative or employee of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence; a person who prepares an Application for Asylum and for Withholding of Removal or Refugee/Asylee Petition for a fee, or who works for such a preparer/attorney; or, a person with a close relationship to the applicant as deemed by the Asylum Office, such as a family member. All contract interpreters must be located within the United States and its territories (*i.e.,* Puerto Rico, Guam, etc.). Additionally, under the International Religious Freedom Act of 1998, USCIS must ensure that ''persons with potential biases against individuals on the grounds of religion, race, nationality, membership in a particular social group, or political opinion . . . shall not in any manner be used to interpret conversations between aliens and inspection or asylum officers.'' 22 U.S.C. 6473(a).

Per contractual requirements, the contract interpreters are carefully vetted and tested. They must pass rigorous background checks as well as demonstrate fluency in reading and speaking English as well as the language of interpretation. The Contractor must test and certify the proficiency of each interpreter as part of their quality control plan. USCIS contractors must provide interpreters capable of accurately interpreting the intended meaning of statements made by the asylum officer, applicant, representative, and witnesses during interviews. The Contractor shall provide interpreters who are fluent in reading and speaking English and one or more other languages. The one exception to the English fluency requirement involves the use of relay interpreters in limited circumstances at the Agency's discretion. A relay interpreter is used when an interpreter does not speak both English and the language the applicant speaks. For example, if an applicant is not fluent in one of the 47 languages and brings their own interpreter, the applicant's interpreter may speak only Akatek (Acateco) and Spanish and the

contract does not support Akatek. Therefore, a relay interpreter would be needed to translate from Spanish to English. However, even in that case, USCIS requires the Contractor to provide a second (or relay) interpreter who is fluent in English and Spanish.

III. Discussion of Regulatory Change: Addition of 8 CFR 208.9(h) [14]

DHS has determined that there are reasonable grounds for regarding potential exposure to COVID–19 as a public health concern and thus sufficient to modify the interpreter requirement for asylum applicants to lower the number of in-person attendees at asylum interviews. DHS will require asylum applicants to proceed with the asylum interview using USCIS's interpreter services for 180 days following publication of this TFR if they are fluent in one of the 47 languages provided.[15] After the 180 days concludes, asylum applicants unable to proceed in English will again be required to provide their own interpreters under 8 CFR 208.9(g). Under the temporary provision, USCIS may be able to provide contract interpreters on demand for approximately 47 different languages [16] listed on the GSA Schedule (see Table A below). This list of languages has also been included in the regulatory text.

TABLE A—REQUIRED LANGUAGES FOR INTERPRETER SERVICES BPA/GSA LANGUAGE SCHEDULE

1. Akan.
2. Albanian.
3. Amharic.
4. Arabic.
5. Armenian.
6. Azerbaijani.
7. Bengali.
8. Burmese.
9. Cantonese.
10. Creole/Haitian Creole.
11. Farsi-Afghani/Dari.
12. Farsi-Iranian.
13. Foo Chow/Fuzhou.
14. French.
15. Georgian.
16. Gujarati.
17. Hindi.
18. Hmong.
19. Hungarian.
20. Indonesia/Bahasa.
21. Konjobal.
22. Korean.
23. Kurdish.
24. Lingala.
25. Mam.
26. Mandarin.
27. Nepali.
28. Pashto/Pushtu.
29. Portuguese.
30. Punjabi.
31. Quiche/K'iche.
32. Romanian.
33. Russian.
34. Serbian.
35. Sinhalese.
36. Somali.
37. Spanish.
38. Swahili.
39. Tagalog.
40. Tamil.
41. Tigrinya.
42. Turkish.
43. Twi.
44. Ukrainian.
45. Urdu.
46. Uzbek.
47. Vietnamese.

If an interpreter is necessary to conduct the interview and a contract interpreter who speaks a language on the GSA Schedule is not available at the time of the interview, USCIS will reschedule the interview and attribute the interview delay to USCIS (and not to the applicant) for the purposes of employment authorization under 8 CFR 208.7.

If an applicant is fluent in a language on the GSA Schedule but refuses to proceed with the interview by using a contract interpreter, USCIS will consider this a failure without good cause to comply with 8 CFR 208.9(h)(1), unless the applicant elects to proceed with a language not on the GSA schedule as discussed below. An applicant's refusal to proceed with the interview using the contract interpreter—for example, due to a preference to proceed with one's own interpreter—will not be considered good cause under 8 CFR 208.9(h)(1)(ii) for an interview delay. The purpose of ensuring the contract interpreters are used is to mitigate the spread of COVID–19 and protect the health and safety of USCIS employees and the public, as explained elsewhere in this preamble. The contract interpreters are vetted and will be provided at no cost to the applicant. Accordingly, under these circumstances, the applicant will be considered to have failed to appear for the interview in accordance with 8 CFR 208.10, and the application will be referred or dismissed.

If the applicant does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, the applicant will be required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA schedule). If an applicant is unable to provide an interpreter fluent in English and the elected language is not found on the GSA Schedule, the applicant may provide an interpreter fluent in the elected language and one found on the GSA Schedule. In this situation, USCIS will provide a contract relay interpreter to interpret between the GSA Schedule language and English.

On June 4, 2020, certain USCIS field offices and asylum offices resumed non-emergency face-to-face services to the public while enacting precautions to prevent the spread of COVID–19 in reopened facilities. USCIS is following a phased approach to reopening in accordance with the Administration's ''Guidelines for Opening Up America Again,'' [17] based on the advice of public health experts, in order to meet its mission in administering the nation's immigration system, while also instituting safety protocols. While USCIS continued to perform duties that did not involve in-person interviews while in-person services were temporarily suspended to mitigate the spread of COVID–19, many immigration benefits, including asylum applications, usually require in-person services and timely immigration adjudications are important. Since USCIS re-opened to the public to resume interviews on June 4, 2020, USCIS has allowed the applicant-provided interpreter to sit separately in another office. However, USCIS only permitted this because it is the current regulatory requirement, which this temporary final rule will amend in order to reduce the risk of exposure.

[14] The interpreter interview provisions can be found in two parallel sets of regulations: Regulations under the authority of DHS are contained in 8 CFR part 208; and regulations under the authority of the Department of Justice (DOJ) are contained in 8 CFR part 1208. Each set of regulations contains substantially similar provisions regarding asylum interview processes, and each articulates the interpreter requirement for interviews before an asylum officer. *Compare* 8 CFR 208.9(g), *with* 8 CFR 1208.9(g). This temporary final rule revises only the DHS regulations at 8 CFR 208.9. Notwithstanding the language of the parallel DOJ regulations in 8 CFR 1208.9, as of the effective date of this TFR, the revised language of 8 CFR 208.9(h) is binding on DHS and its adjudications for 180 days. DHS would not be bound by the DOJ regulation at 8 CFR 1208.9(g).

[15] DHS is not modifying 8 CFR 208.9(g) with this temporary rule; however, the temporary rule is written so that any asylum interviews occurring while the temporary rule is effective will be bound by the requirements at 8 CFR 208.9(h).

[16] According to internal data for asylum interviews scheduled in FY19, 83% of asylum applicants spoke at least one of the 47 languages and only 5% spoke a language not included on this list.

[17] The White House and Centers for Disease Control and Prevention, *Guidelines Opening Up America Again, https://www.whitehouse.gov/openingamerica/.*

In drafting this temporary rule, USCIS considered continuing to allow interpreters to attend the interview in person but sit separately, or to provide interpretation by video or telephone could be another means of maintaining recommended social distancing. While requiring an applicant-provided interpreter to sit separately in another office allows for appropriate social distancing from the applicant, attorney and interviewing officer during the interview, it could create more risk for the asylum office staff because interpreters often participate in many asylum interviews or other interviews with USCIS in a single day, which could heighten the risk of contracting or spreading the illness in the waiting room or other common areas. Further, allowing an applicant's interpreter to appear by telephone or video could adversely affect the applicant, USCIS, and the public. USCIS recognizes that allowing an applicant's interpreter to appear by telephone or video may support the goals of social distancing; however, USCIS has not allowed applicant-provided interpreters to appear telephonically at affirmative asylum interviews in the past. This is because USCIS is unable to confirm the interpreter's identity and assure that the individual meets the minimum requirements to be an interpreter under the applicable regulation and policy. In addition, USCIS is unable to properly ensure that the interpreter is protecting the confidentiality of the asylum applicant and not recording the interview, which could encourage and support asylum fraud and damage legitimate asylum seekers and the lawful asylum system. Thus, USCIS finds that providing a professional contract interpreter is a better option for the applicant, USCIS, and the public.

The government-provided contract interpreters will not put applicants at a disadvantage or adversely affect applicants. The contract interpreters are carefully vetted and tested. They must pass rigorous background checks as well as meet a high standard of competency. Additionally, serving as interpreters during asylum interviews would not be a novel or new function for contract interpreters to perform, nor would utilizing them in this limited and emergency circumstance cause additional costs to USCIS or the public. USCIS has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. While not required by regulation for asylum interviews, USCIS has provided monitors for many years as a matter of policy except when the applicant spoke English, the contract vendor did not cover the language, or a monitor was unavailable at the time of the call. Since the cost of monitoring and interpretation are identical under the contract, the implementation of this change is projected to be cost neutral or negligible as USCIS is already paying for these services and the contract is already budgeted for. The contract interpreters already regularly serve as interpreters for screening interviews in expedited removal and other contexts and act as interpreter monitors or occasionally serve as the primary interpreter during affirmative asylum interviews, so they are familiar with the operational realities of asylum interviews and the role of an interpreter during those interviews. USCIS also has internal procedural safeguards in place. For example, in situations where the applicant or asylum officer believes that the contract interpreter abuses their role, appears biased or prejudicial against the applicant, appears to be breaching confidentiality or otherwise are not conducting themselves professionally, the interview may be stopped so that the officer may obtain another contract interpreter. The problems with the contract interpreter may also be reported to the Contractor for appropriate action.

The use of contract interpreters will increase the efficiency of the asylum interviews as interviews would not need to be rescheduled due to failure to appear (because the applicant did not bring a proper interpreter) or interpreter incompetence, and USCIS-provided interpretation is likely to be faster and more efficient when the applicant-provided interpreter is not a professional. Interviews will less likely need to be rescheduled due to sickness of an interpreter and will ensure the safety of USCIS employees and asylum applicants and mitigate the spread of the disease. In addition, government-funded interpretation will eliminate pre-interview inefficiencies, such as screening out ineligible interpreters, and will eliminate time spent on examining whether an interpreter misinterpreted any material aspects of the asylum interview or committed fraud or acted improperly because of the strict vetting and testing requirements for contract interpreters.

This provision will be subject to a temporal limitation of 180 days unless it is further extended and it applies to all asylum interviews across the nation. USCIS has determined that 180 days is appropriate given that (1) the pandemic is ongoing; (2) there is much that is unknown about the transmissibility, severity, and other features associated with COVID–19; and (3) mitigation is especially important before a vaccine or drug is developed and becomes widely available. Prior to the expiration of this temporary rule, DHS will evaluate the public health concerns and resource allocation, to determine whether to extend the temporal limitation. If necessary, DHS would publish any such extension via a rulemaking in the **Federal Register**.

IV. Regulatory Requirements

A. Administrative Procedure Act (APA)

DHS is issuing this rule as a temporary final rule pursuant to the APA's ''good cause'' exception. 5 U.S.C. 553(b)(B). Agencies may forgo notice-and-comment rulemaking and a delayed effective date while this rulemaking is published in the **Federal Register** because the APA provides an exception from those requirements when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B); *see* 5 U.S.C. 553(d)(3).

The good cause exception for forgoing notice-and-comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir 1992), DHS has appropriately invoked the exception in this case, for the reasons set forth below. Additionally, on multiple occasions, agencies have relied on this exception to promulgate both communicable disease-related [18] and immigration-related [19] interim rules.

[18] HHS Control of Communicable Diseases; Foreign Quarantine, 85 FR 7874 (Feb. 12, 2020) (interim final rule to enable the CDC ''to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions''); Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals, 68 FR 62353 (Nov. 4, 2003) (interim final rule to modify restrictions to ''prevent the spread of monkeypox, a communicable disease, in the United States.'').

[19] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require a passport and visa from certain H2–A Caribbean agricultural workers to avoid ''an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule''); Suspending the 30-Day and

As discussed earlier in this preamble, on January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act in response to COVID–19.[20] On March 13, 2020, President Trump declared a National Emergency concerning the COVID–19 outbreak, dated back to March 1, 2020, to control the spread of the virus in the United States.[21] As of July 31, 2020, there were approximately 17,106,007 cases of COVID–19 globally, resulting in approximately 668,910 deaths; approximately 4,405,932 cases have been identified in the United States, with new cases being reported daily, and approximately 150,283 deaths due to the disease.[22] Currently, there is no vaccine against COVID–19. Treatment is currently limited to supportive care to manage symptoms. Hospitalization may be required in severe cases and mechanical respiratory support may be needed in the most severe cases.

DHS has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule. Delaying implementation of this rule until the conclusion of notice-and-comment procedures and the 30-day delayed effective date would be impracticable and contrary to the public interest due to the need to resume agency operations and associated risk to asylum office staff, as well as the public, with the spread of COVID–19.

As of July 31, 2020, USCIS had 370,948 asylum applications, on behalf of 589,187 aliens, pending final adjudication. Over 94% of these pending applications are awaiting an interview by an asylum officer. The USCIS backlog will continue to increase unless USCIS can safely and efficiently conduct asylum interviews.

Since resuming agency operations under the current regulatory requirements, asylum applicants unable to proceed in English must provide their own interpreters. This means that the interpreter currently accompanies the applicant to and within the USCIS facility, thereby increasing the risk of contracting and/or transferring COVID–19 to themselves or others while entering the space and observing the usual security screening protocols, as well as while accessing space throughout the facility during the appointment such as, information counters, waiting rooms, restrooms, and/or private interview offices. Interpreters who accompany asylum applicants to asylum offices often work as professional interpreters providing a variety of in-person interpreting services and as such have regular in-person exposure to a wide range of individuals as a matter of course. Accordingly, they are at a greater risk of being exposed to COVID–19. Whereas, under the TFR, the USCIS-provided interpreters would appear telephonically, minimizing the spread and exposure to COVID–19. The longer the effective date of this regulatory change is delayed, the longer USCIS will have to continue to potentially expose our workforce, applicants and attorneys to risk at USCIS facilities—potentially negatively impacting the health of employees, stakeholders and the public health of the United States in general.

As discussed elsewhere in this rule, COVID–19 is contagious, and symptoms may not be present until up to 14 days after exposure, and USCIS currently has over 353,000 applicants awaiting an asylum interview. Although USCIS has protocols in place to insulate against the risk of spread, requiring an interpreter to accompany every asylum applicant who cannot proceed in English has the potential to raise the number of individuals impacted and possibly exposed to the disease. Additionally, applicants and applicant-provided interpreters may contract or transmit the disease if and when they come into contact with others through, for example, transit to the USCIS facility. Notably, unlike the applicant themselves, interpreters are often repeat visitors to the asylum office, some appearing multiple times per week and even handling more than one case per day. As such, the repeated trips to the office and the likelihood that multiple appointments will increase the risk of spread within an asylum office because an interpreter may have contact with several employees over the course of multiple visits within a short period of time. These factors pose a serious risk to local communities and the operational posture of USCIS, and are why under the TFR, USCIS would only allow an applicant-provided interpreter to physically attend the interview if the applicant does not speak one of the 47 languages provided by USCIS provided contract interpreters.

DHS recognizes that some applicants may prefer to use their own interpreters, but for the reason stated above and elsewhere in this preamble, it has determined that the benefits of this rule outweigh the potential preference of some applicants. This temporary final rule is promulgated as a response to COVID–19. It is temporary, limited in application to only those asylum applicants who cannot proceed with the interview in English, and narrowly tailored to mitigate the spread of COVID–19. To delay such a measure could cause serious and far-reaching public safety and health effects.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Unfunded Mandates Reform Act of 1995

This temporary final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This temporary final rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because ''without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews'' over a six-month period).

[20] HHS, Determination of Public Health Emergency.

[21] Proclamation 9994 (Mar. 13, 2020).

[22] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—193 (July 31, 2020), *available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200731-covid-19-sitrep-193.pdf?sfvrsn=42a0221d_2;* CDC, Coronavirus Disease 2019 (COVID–19): Cases in U.S. (July 31, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

E. Executive Order 12866 Executive Order 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency.

This TFR will help asylum applicants proceed with their interviews in a safe manner, while protecting agency staff. This rule is not expected to result in any additional costs to the applicant or to the government. As previously explained, the contract interpreters will be provided at no cost to the applicant. USCIS already has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. USCIS has provided monitors for many years. Almost all interviews that utilize a USCIS provided interpreter after this rulemaking would have had a contracted monitor under the status quo. As the cost of monitoring and interpretation are identical under the contract and monitors will no longer be needed for these interviews, the implementation of this rule is projected to be cost neutral or negligible as USCIS is already paying for these services even without this rule.

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this is a temporary final rule and would only span 180 days, USCIS does not anticipate a need to update the Form I–589, Application for Asylum and for Withholding of Removal, despite the existing language on the Instructions regarding interpreters, because it will be primarily rescheduling interviews that were cancelled due to COVID. USCIS will post updates on its I–589 website, *https://www.uscis.gov/i-589,* and other asylum and relevant web pages regarding the new interview requirements in this regulation, as well as provide personal notice to applicants via the interview notices issued to applicants prior to their interview.

I. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Ian Brekke, Deputy General Counsel for DHS, for purposes of publication in the **Federal Register**.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 2. Section 208.9 is amended by adding paragraph (h) to read as follows:

208.9 Procedure for interview before an asylum officer.

* * * * *

(h) Asylum Applicant Interpreters for asylum interviews conducted between September 23, 2020, through March 22, 2021.

(1) Asylum applicants unable to proceed with the interview in English must use USCIS's telephonic interpreter services, so long as the applicant is fluent in one of the following languages: Akan, Albanian, Amharic, Arabic, Armenian, Azerbaijani, Bengali, Burmese, Cantonese, Creole/Haitian Creole, Farsi-Afghani/Dari, Farsi-Iranian, Foo Chow/Fuzhou, French, Georgian, Gujarati, Hindi, Hmong, Hungarian, Indonesia/Bahasa, Konjobal, Korean, Kurdish, Lingala, Mam, Mandarin, Nepali, Pashto/Pushtu, Portuguese, Punjabi, Quiche/K'iche, Romanian, Russian, Serbian, Sinhalese, Somali, Spanish, Swahili, Tagalog, Tamil, Tigrinya, Turkish, Twi, Ukrainian, Urdu, Uzbek, or Vietnamese.

(i) If a USCIS interpreter is unavailable at the time of the interview, USCIS will reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7.

(ii) Except as provided in paragraph (h)(1)(iii) of this section, if an applicant is fluent in a language listed in this paragraph (h)(1) but refuses to proceed with the USCIS interpreter in order to use his or her own interpreter, USCIS will consider this a failure without good cause to comply with this paragraph (h)(1). The applicant will be considered to have failed to appear for the interview for the purposes of 8 CFR 208.10.

(iii) If the applicant elects to proceed in a language that is not listed in this paragraph (h)(1), the applicant must provide a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. If an applicant is unable to provide an interpreter fluent in English and the elected language not listed in this paragraph (h)(1), the applicant may provide an interpreter fluent in the elected language and one found in this paragraph (h)(1). USCIS will provide a relay interpreter to interpret between the language listed in this paragraph (h)(1) and English. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of 8 CFR 208.10.

(2) [Reserved]

Ian Brekke,

Deputy General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–21073 Filed 9–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0795; Product Identifier 2019–SW–069–AD; Amendment 39–21247; AD 2020–19–05]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Helicopter Textron Canada Limited (Bell) Model 505 helicopters. This AD requires inspecting each swashplate assembly bearing (bearing), and depending on the inspection results, removing the bearing from service. This AD was prompted by a report of a bearing that migrated out of the swashplate inner ring. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD becomes effective October 8, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of October 8, 2020. The FAA must receive comments on this AD by November 9, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0795; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Transport Canada AD, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at *https://www.bellcustomer.com.*

You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0795.

FOR FURTHER INFORMATION CONTACT: Daniel E. Moore, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *daniel.e.moore@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, the FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. The FAA will consider all the comments received and may conduct additional rulemaking based on those comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this final rule. Submissions containing CBI should be sent to Daniel E. Moore, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *daniel.e.moore@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF–2019–28, dated July 25, 2019, to correct an unsafe condition for Bell Model 505 helicopters, serial number 65011 through 65211. Transport Canada advises of a report showing that a bearing migrated out of its inner ring. An investigation revealed that, although the inspection witness mark was applied to the part, the bearing had not been staked during manufacturing. Transport Canada further advises that an un-staked bearing, which has migrated out of its bore, may lead to restriction of the swashplate's movement as a result of contact or binding between the control tube clevis and the bearing housing.

This contact or binding may restrict control authority and may also introduce unintended loads into the control system causing a failure of the control tube and/or bearing. This situation, if not corrected, could lead to loss of control of the helicopter. Accordingly, the Transport Canada AD

requires a one-time inspection of each bearing.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all of the information provided by Transport Canada and determining the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

Bell has issued Alert Service Bulletin 505–19–13, dated July 2, 2019, which specifies procedures for a one-time inspection of the staking of certain bearings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Bell Helicopter has issued BHT–ALL–SPM Chapter 9—Bearings, Sleeves, and Bushings, Revision 7, dated March, 24, 2017, which specifies procedures for servicing swashplate assembly bearings, sleeves, and bushings.

AD Requirements

This AD requires, within 20 hours time-in-service (TIS), using a 10X or higher power magnifying glass, inspecting both sides of each affected bearing for staking in the outer ring part number (P/N) 206–010–453, inner ring P/N 206–010–451, and lever assembly P/N 206–010–447. If either side of a bearing is not staked, this AD requires removing the bearing from service before further flight.

Differences Between This AD and the Transport Canada AD

The Transport Canada AD requires inspecting the bearings for proper staking, whereas this AD requires inspecting both sides of each bearing for staking instead. If a swashplate assembly bearing is not staked, the Transport Canada AD requires replacing the bearing and contacting Bell, whereas this AD requires removing the bearing from service instead.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 81 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting the bearings for staking takes about one work-hour for an estimated cost of $85 per helicopter and $6,885 for the U.S. fleet. Replacing a bearing takes about one work-hour and parts cost about $100 for an estimated cost of $185 per replacement.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the required corrective action must be completed within 20 hours TIS, a time period of up to one month based on the average flight-hour utilization rate of these helicopters. Therefore, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than one month.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866, and

2. Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2020–19–05 Bell Helicopter Textron Canada Limited: Amendment 39–21247; Docket No. FAA–2020–0795; Product Identifier 2019–SW–069–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Canada Limited Model 505 helicopters, certificated in any category, with a serial number (S/N) 65011 through 65211 inclusive, and swashplate assembly part number (P/N) 206–010–450–123 with an S/N listed in Table 1 of Bell Alert Service Bulletin 505–19–13, dated July 2, 2019, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as an unstaked swashplate assembly bearing which may migrate out of its bore. This condition could result in restricted control authority, unintended loads on the control system, failure of the control tube or bearing, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective October 8, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 20 hours time-in-service, inspect both sides of each swashplate assembly bearing (bearing) for staking by following the Accomplishment Instructions, paragraph 4., of Bell Alert Service Bulletin 505–19–13, dated July 2, 2019, except you may use a 10X or higher power magnifying glass. If either side of a bearing is not staked, before further flight, remove the bearing from service.

(f) Special Flight Permits

A special flight permit may be permitted for a one-time ferry flight to an authorized repair facility.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Daniel E. Moore, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Bell Helicopter BHT–ALL–SPM Chapter 9—Bearings, Sleeves, and Bushings Revision 7 dated March 24, 2017 dated, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at *https://www.bellcustomer.com.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Transport Canada AD No. CF–2019–28, dated July 25, 2019. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0795.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bell Alert Service Bulletin 505–19–13, dated July 2, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at *https://www.bellcustomer.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 3, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20911 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0483; Product Identifier 2016–SW–066–AD; Amendment 39–21241; AD 2020–18–20]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. (MDHI), Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MD Helicopters Inc. (MDHI) Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters. This AD was prompted by reports of abrasion strips departing the main rotor (MR) blade in-flight. This AD requires tap inspecting each MR blade leading edge abrasion strip. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 28, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 28, 2020.

ADDRESSES: For service information identified in this final rule, contact Helicopter Technology Company, LLC, address 12902 South Broadway, Los Angeles, CA 90061; telephone (310) 523–2750; email *gburdorf@helicoptertech.com;* or at *http://www.helicoptertech.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0483.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0483; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Payman Soltani, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5313; email *payman.soltani@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to MDHI Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters with a MR blade part number (P/N) 500P2100–105, P/N 500P2100–305, P/N 500P2300–505, P/N 369D21120–505, P/N 369D21121–505, or P/N 369D21123–505 with a 1.25 inch chord length nickel abrasion strip (abrasion strip) manufactured or installed by Helicopter Technology Company, LLC (HTC), or

where the manufacturer of the abrasion strip is unknown, except if the abrasion strip has accumulated 700 or more hours time-in-service (TIS). The NPRM published in the **Federal Register** on May 14, 2020 (85 FR 28895).

The NPRM was prompted by reports of leading edge abrasion strips manufactured by HTC departing the MR blades during flight. An investigation determined that the abrasion strips were manufactured from electroformed nickel, have a chord length of 1.25 inch, and are delaminating from the MR blade before departing from the helicopter. HTC has determined that a repetitive tap inspection of the abrasion strips should be performed on all blades with abrasion strips that have less than 700 hours TIS to detect any voids, including blistering, bubbling, or lifting of the abrasion strip. Identical looking electroformed nickel abrasion strips with a chord length of 1.25 inch manufactured by other repair stations have not departed in flight and therefore were not proposed as the subject of this AD.

To address this unsafe condition, the NPRM proposed to require tap inspecting the abrasion strip within 10 hours TIS and thereafter before the first flight of each day until the abrasion strip has accumulated 700 or more hours TIS since installation.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Supportive Comment

The FAA received one comment in support of the NPRM.

Requests

Request: HTC stated that the NPRM proposed to mandate its service bulletin that was issued June 1, 2017, and that there has not been a documented case of an abrasion strip departure related to this issue in 4 years. HTC further stated that the majority of affected operators have either modified the abrasion strip or accumulated more than 700 hours TIS, such that the proposed AD would no longer apply. Although HTC did not request any changes to the NPRM, the FAA infers that this commenter would like the FAA to withdraw the proposed AD.

FAA's Response: The FAA partially agrees. The FAA has not received any reports of an abrasion strip departure related to this issue since issuance of the HTC service bulletin. In addition, about a third of the abrasion strips have been modified and others have accumulated more than 700 hours TIS, and therefore would not be affected by this AD. However, because some affected abrasion strips are still in service or may be stored as spare parts, the unsafe condition exists and corrective action is necessary. The FAA has made no changes based on these comments.

Request: Wilson Construction requested that the FAA change the NPRM to allow pilots to perform the tap test following proper training, to avoid difficulties complying with the AD while away from base of operations or during cross country flights. The commenter stated that this would be consistent with AD 88–17–09 R1 (Amendment 39–6400; 54 FR 48583, November 24, 1989) (''AD 88–17–09 R1''), which allows a pilot to perform a pre-flight check, and that the test itself is simple to perform.

FAA's Response: The FAA disagrees. AD 88–17–09 R1 allows the pilot to perform a check of the tail boom extension for security. This check is an exception to the FAA's standard maintenance regulations and is allowed in AD 88–17–09 R1 because it is a visual check that can be performed equally well by a pilot or a mechanic and does not require training or the use of tools. Since the tap inspection proposed in the NPRM would require both training and the use of a tool, allowing a pilot to perform it is not acceptable. The FAA made no changes in this final rule based on this comment.

Request: Wilson Construction stated the inspection criteria in the proposed AD are already specified by the manufacturer of the MR blades (HTC) and by MDHI. The commenter stated if owners/operators would follow the manufacturer's instructions, then an AD would not be necessary.

FAA's Response: The FAA agrees. Not all operators are required to incorporate a manufacturer's maintenance instructions into the operator's maintenance program. Where the FAA has determined that a manufacturer's maintenance instructions are necessary to correct an unsafe condition, the FAA must issue an AD to mandate those instructions. The FAA made no changes in this final rule based on this comment.

FAA's Determination

The FAA has reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with minor editorial changes. These minor changes are consistent with the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

The FAA reviewed HTC Mandatory Service Bulletin Notice No. 2100–8R4, dated June 1, 2017, which specifies a daily tap inspection of the MR blade abrasion strip to detect voids. If there are any voids, this service information specifies repairing or replacing the MR blade, depending on the size, quantity, and location of any damage.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 50 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD.

At an average labor rate of $85 per hour, tap-testing the MR blades requires about 0.25 work-hour, for a cost per helicopter of $22 per inspection cycle. If required, replacing an MR blade requires about 1 work-hour and required parts cost up to $24,130, for a cost per helicopter of $24,215.

According to HTC's service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by HTC. Accordingly, the FAA has included all costs in this cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or

develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2020–18–20 MD Helicopters Inc. (MDHI): Amendment 39–21241; Docket No. FAA–2020–0483; Product Identifier 2016–SW–066–AD.

(a) Applicability

This AD applies to MD Helicopters Inc. (MDHI) Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters, certificated in any category, with a main rotor (MR) blade part number (P/N) 500P2100–105, P/N 500P2100–305, P/N 500P2300–505, P/N 369D21120–505, P/N 369D21121–505, or P/N 369D21123–505 with a 1.25 inch chord length nickel abrasion strip (abrasion strip) manufactured or installed by Helicopter Technology Company, LLC (HTC), or where the manufacturer of the abrasion strip is unknown. This AD does not apply if the abrasion strip has accumulated 700 or more hours time-in-service (TIS).

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the bond between the leading edge abrasion strip and an MR blade. This condition could result in the abrasion strip departing the MR blade in-flight, subsequent imbalance of the rotor system, and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective October 28, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 10 hours TIS and thereafter before the first flight of each day, tap inspect each MR blade leading edge abrasion strip for a void in accordance with Part 1—Inspection, paragraphs 2 through 4, of HTC Mandatory Service Bulletin Notice No. 2100–8R4, dated June 1, 2017.

(1) If there is a void within 0.5 inch (12.7 mm) of the edge of the abrasion strip, before further flight, replace the MR blade.

(2) If there is a void larger than 0.5 square inch (322.6 square mm) or if there is more than one void of any size, before further flight, replace the MR blade.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Los Angeles ACO Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Payman Soltani, Aviation Safety Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5313; email *9-ANM-LAACO-AMOC-REQUESTS@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blade.

(h) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Helicopter Technology Company, LLC, Mandatory Service Bulletin Notice No. 2100–8R4, dated June 1, 2017.

(ii) [Reserved]

(3) For service information identified in this AD, contact Helicopter Technology Company, LLC, address 12902 South Broadway, Los Angeles, CA 90061; telephone (310) 523–2750; email *gburdorf@helicoptertech.com;* or at *http://www.helicoptertech.com.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N 321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 31, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20930 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0828; Airspace Docket No. 20–AWA–1]

RIN 2120–AA66

Amendment of Phoenix Sky Harbor Class B Legal Description

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the Phoenix Sky Harbor Class B legal description by accurately reflecting the name of the geographical reference point, I–10/Squaw Peak Stack to I–10/ Stack contained in the Area A and Area D legal description. The FAA is taking this action because the local community removed Squaw Peak from the geographical reference point and to ensure accurate information is reflected.

DATES: 0901 UTC, December 31, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulation part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington,

DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Airspace Policy Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Phoenix Sky Harbor Class B legal description to preserve the safe and efficient flow of air traffic.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 of the Code of Federal Regulations (14 CFR) part 71 by amending the Phoenix Sky Harbor, Class B Area A and Area D legal description, removing the terms Squaw Peak, due to the same actions by local community legislation.

Since this action merely involves editorial changes in the legal description of the Phoenix Sky Harbor, Class B, Area A and Area D and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class B Airspace is published in paragraph 3000 Subpart B, of FAA Order 7400.11E, signed July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class B Airspace listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending the airspace descriptions of the Phoenix Sky Harbor, Class B area A and Area D legal description, by removing the references to the term Squaw Peak as a geographic reference point, qualifies for categorical exclusion under the National Environmental Policy Act and its agency-specific implementing regulations in FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' regarding categorical exclusions for procedural actions at paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, *Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points*). This airspace action is an editorial change only and is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, signed July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

AWP AZ B Phoenix, AZ

Phoenix Sky Harbor International Airport (Primary Airport)
(Lat. 33°26′03″ N, long. 112°00′42″ W)
Phoenix VORTAC
(Lat. 33°25′59″ N, long. 111°58′13″ W)

Boundaries

Area A. That airspace extending upward from the surface to and including 9,000 feet MSL defined by an east/west line along the northern boundary defined by Camelback Road and the PXR 10 DME, thence east to the intersection of Camelback Road and I–17; thence a line direct to the I–10 Stack following the Loop 202 Freeway from the I–10 Stack to the Red Mountain Hohokam Stack; thence northeast to the intersection of Camelback Road and Hayden Wash (lat. 33°30′07″ N, long. 111°54′32″ W); thence east along Camelback Road to the PXR 6 DME arc (lat. 33°30′07″ N, long. 111°53′00″ W); thence south to the Power Line/Canal (lat. 33°21′25″ N, long. 111°53′33″ W); thence west to a point at lat. 33°21′25″ N, long. 111°54′55″ W, thence northwest to the intersection of I–10 and SR–143 (lat. 33°24′37″ N, long. 111°58′38″ W); thence west to SR–51/I–10 extension to lat. 33°24′34″ N, long. 112°02′13″W, thence southwest to a point at lat. 33°21′45″ N, long. 112°06′20″ W; thence west along the lat. 33°21′45″ N; thence north along the PXR 10 DME arc until intersecting Camelback Road.

Area D. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL defined by an east/west line along the northern boundary using the Peoria Avenue/Shea Boulevard alignment from the

intersection of I–17 (lat. 33°35′00″ N, long. 112°07′00″ W); thence east along lat. 33°35′00″ N to the intersection with Pima Road (lat. 33°35′00″ N, long. 111°53′28 W); thence south along Pima Road to the intersection of Camelback Road; thence west along Camelback Road to Hayden Wash (lat. 33°30′07″ N, long. 111°54′32″ W); thence southwest on a line direct to the Red Mountain Hohokam Stack; thence west along the Loop 202 Freeway to the I–10 Stack; thence northwest to the intersection of Camelback Road and I–17; thence north along I–17 to the intersection of I–17 and Peoria Avenue/Shea Boulevard.

* * * * *

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–20923 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0630; Airspace Docket No. 20–AGL–25]

RIN 2120–AA66

Amendment of Class E Airspace; Frankfort, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Frankfort Dow Memorial Field Airport, Frankfort, MI. This action as the result of an airspace review caused by the cancellation of instrument procedures at the airport. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 31, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Frankfort Dow Memorial Field Airport, Frankfort, MI, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 43510; July 17, 2020) for Docket No. FAA–2020–0630 to amend the Class E airspace extending upward from 700 feet above the surface at Frankfort Dow Memorial Field Airport, Frankfort, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 7.2-mile (increased from a 6.4-mile) radius of Frankfort Dow Memorial Field Airport, Frankfort, MI; removes the Manistee VOR/DME and associated extension from the airspace legal description, as it is no longer required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the cancellation of instrument procedures at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Frankfort, MI [Amended]

Frankfort Dow Memorial Field Airport, MI
(Lat. 44°37′31″ N, long. 86°12′03′ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Frankfort Dow Memorial Field Airport.

Issued in Fort Worth, Texas, on September 17, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–20881 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0504; Airspace Docket No. 20–AAL–4]

RIN 2120–AA66

Removal of Colored Federal Airways Amber 7 (A–7), Green 11 (G–11), and Amendment of Amber 1 (A–1); Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes two Colored Federal airways, A–7 and G–11, and amends one Colored Federal airway, A–1 in Alaska. The modifications are necessary due to the planned decommissioning of the Campbell Lake Non-Directional Beacon (NDB) in Anchorage, AK, which provides navigation guidance for portions of the affected routes. The Campbell Lake NDB is to be decommissioned due to ongoing maintenance problems.

DATES: Effective date 0901 UTC, December 31, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records

Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0504 in the **Federal Register** (85 FR 35818; June 12, 2020) removing Colored Federal airways A–7, G–11 and amending A–1. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document will be subsequently published in the Order.

Differences From the NPRM

In the NPRM amendment section addressing the proposed removal of A–7, the text was stated in error as G–7. This rule corrects that editorial error in the amendment section.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Colored Federal airways A–7, G–11, and A–1. The Colored Airway actions are described below.

A–7: A–7 currently extends between the Campbell Lake, AK, NDB and the Mineral Creek, AK, NDB. This action removes the entire route.

G–11: G–11 currently extends between the Campbell Lake, AK, NDB and the Nabesna, AK, NDB. This action removes the entire route.

A–1: A–1 currently extends from the Abbotsford, BC, Canada, NDB and the Fort Davis, AK NDB. The FAA action removes the segment between the Orca Bay, AK, NDB and the Takotna River, AK, NDB. The unaffected portions of the existing route remain as charted. The portion within Canada is excluded.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of removing Colored Federal airways A–7, G–11, and amending Colored Federal airway A–1 qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6009 Colored Federal Airways.

* * * * *

A–1 [Amended]

From Abbotsford, BC Canada NDB, to Victoria, BC Canada NDB, Sandspit, BC, Canada, NDB 96 miles 12 AGL, 102 miles 35 MSL, 57 miles 12 AGL, via Sitka, AK, NDB; 31 miles 12 AGL, 50 miles 47 MSL, 88 miles 20 MSL, 40 miles 12 AGL, Ocean Cape, AK, NDB; INT Ocean Cape NDB 283° and Orca Bay, AK, NDB 106° bearings; Orca Bay NDB; From Takotna River, AK, NDB; 24 miles 12 AGL, 53 miles 55 MSL; 51 miles 40 MSL, 25 miles 12 AGL, North River, AK, NDB; 17 miles 12 AGL, 89 miles 25 MSL, 17 miles 12 AGL, to Fort Davis, AK, NDB. Excluding that airspace within Canada.

* * * * *

A–7 [Removed]

* * * * *

G–11 [Removed]

* * * * *

Issued in Washington, DC, on September 17, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–20924 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on September 22, 2020 and will remain in effect until 11:59 p.m. EDT on October 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a ''specific threat to human life or national interests.'' The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on September 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of September 13, there are over 28.6 million confirmed cases globally, with over

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

[2] *See* 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel.'' *See* 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

917,000 confirmed deaths.[3] There are over 6.5 million confirmed and probable cases within the United States,[4] over 135,000 confirmed cases in Canada,[5] and over 658,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.''

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on October 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–21020 Filed 9–21–20; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Sept. 13, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200914-weekly-epi-update-5.pdf?sfvrsn=cf929d04_2.*

[4] CDC, COVID Data Tracker (last updated Sept. 16, 2020), available at *https://covid.cdc.gov/covid-data-tracker/.*

[5] WHO, COVID–19 Weekly Epidemiological Update (Sept. 13, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on September 22, 2020 and will remain in effect until 11:59 p.m. EDT on October 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a ''specific threat to human life or national interests.'' The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on September 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of September 13, there are over 28.6 million confirmed cases globally, with over 917,000 confirmed deaths.[3] There are over 6.5 million confirmed and probable cases within the United States,[4] over 135,000 confirmed cases in Canada,[5] and over 658,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.''

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel.'' *See* 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Sept. 13, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200914-weekly-epi-update-5.pdf?sfvrsn=cf929d04_2*.

[4] CDC, COVID Data Tracker (last updated Sept. 16, 2020), available at *https://covid.cdc.gov/covid-data-tracker/*.

[5] WHO, COVID–19 Weekly Epidemiological Update (Sept. 13, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

• Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on October 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–21019 Filed 9–21–20; 8:45 am]

BILLING CODE 9112–FP–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0655; FRL–10012–28–Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District and Feather River Air Quality Management District

Correction

In Rule document 2020–17181, appearing on pages 56521–56525, in the issue of Monday, September 14, 2020, make the following correction:

On page 56521, in the second column, the document heading is corrected to read as set forth above.

[FR Doc. C1–2020–17181 Filed 9–22–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 633

[Docket No. FTA–2019–0016]

RIN 2132–AB35

Project Management Oversight

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FTA regulations implementing project management oversight. FTA is modifying the regulation to make it consistent with statutory changes and to modify the scope and applicability of project management oversight.

DATES: Effective on October 23, 2020.

FOR FURTHER INFORMATION CONTACT: For program matters, Corey Walker, Office of Program Management, (202) 366–0826 or *corey.walker@dot.gov.* For legal matters, Mark Montgomery, Office of Chief Counsel, (202) 366–4011 or *mark.montgomery@dot.gov.* FTA is located at 1200 New Jersey Ave. SE, Washington, DC 20590–0001. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Rulemaking Background

Recognizing a compelling need to strengthen the management and oversight of major capital projects, in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17) (April 2, 1987), Congress authorized FTA's predecessor agency, the Urban Mass Transportation Administration (UMTA), to conduct oversight of major capital projects and to promulgate a rule for that purpose. The statute, now codified at 49 U.S.C. 5327, authorizes FTA to obtain the services of project management oversight contractors (PMOCs) to assist FTA in overseeing the expenditure of Federal financial assistance for major capital projects. Further, the statute requires FTA to promulgate a regulation that includes a definition of ''major capital project'' to identify the types of projects governed by the rule.

Accordingly, UMTA promulgated a rule for oversight of major capital projects on September 1, 1989, at 49 CFR part 633 (54 FR 36708). At that time, UMTA's capital programs were comparatively small, relative to today, totaling a little more than $2 billion annually. UMTA promulgated a regulation that defined ''major capital project'' as any project for the construction of a new fixed guideway or extension of an existing fixed guideway or a project involving the rehabilitation or modernization of an existing fixed guideway with a total project cost of $100 million or more. The rule limited covered projects to those receiving funds made available under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 103(e)(4); or section 14(b) of the National Capital Transportation Amendments of 1979. That rule is still in effect today.

By 2011, the annual dollar value of the Federal transit capital programs was nearly five times the level authorized under STURAA in 1987, and the number of active PMOC task orders was more than double the number in 1987. Furthermore, FTA funded a larger number of projects with a total cost of more than one billion dollars that presented significant oversight challenges. On September 13, 2011, FTA published a Notice of Proposed Rulemaking (NPRM) (76 FR 56378) that proposed to: (1) Enable FTA to identify the necessary management capacity and capability of a sponsor of a major capital project more clearly; (2) spell out the many facets of project management that must be addressed in a project management plan; (3) tailor the level of FTA oversight to the costs, complexities, and risks of a major capital project; (4) set forth the means and objectives of risk assessments for major capital projects and; (5) articulate the roles and responsibilities of FTA's PMOCs.

After the NPRM was published, however, the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) (July 6, 2012) repealed the Fixed Guideway Modernization program, created the State of Good Repair program, and amended the Capital Investment Grants Program to add Core Capacity Improvement projects and streamline the New and Small Starts project development process. Moreover, MAP–21 shifted the initiation of project management

oversight to the project development phase and removed the statutory requirement that recipients of financial assistance for projects with a total cost of $1 billion submit an annual financial plan. Given the fundamental changes to these competitive and formula capital programs, FTA withdrew the NPRM (78 FR 16460) to reexamine its proposed definition of major capital project and its policy and procedures for risk assessment. Subsequently, the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) (December 4, 2015) further amended 49 U.S.C. 5327 to limit project management oversight to quarterly reviews, absent a finding that more frequent oversight was necessary, and mandated that the Secretary prescribe regulations outlining a process for at-risk recipients to return to quarterly reviews.

FTA has become much more knowledgeable about the risks common to major capital projects, having conducted its own risk assessments since 2005, witnessed some project sponsors' lack of management capacity and capability and appropriate project controls for some projects, and studied the reasons for cost and schedule changes on many major capital projects. Consequently, on August 26, 2019, FTA published an NPRM (84 FR 44590) proposing to amend its project management oversight rule.

First, the NPRM proposed to change the applicability of the regulation by shifting the definition of a ''major capital project'' from one based on the type of project or total project cost to one based on both the amount of Federal financial assistance and the total project cost, which FTA views as a more appropriate benchmark than the type of project or total capital cost of a project alone. The current definition of a ''major capital project'' under 49 CFR 633.5 applies to all construction projects for new fixed guideways or extensions of existing fixed guideways, regardless of project cost, and to fixed guideway rehabilitation and modernization projects with total project costs over $100 million. The NPRM applied a project cost threshold to all fixed guideway capital projects. As a default, the rule proposed raising the total project cost threshold to $300 million or more and requiring that the project receive $100 million or more in Federal investment to be subject to project management oversight.

Second, the NPRM proposed to amend the regulation to bring it into compliance with statutory changes. The rule proposed limiting project management oversight to quarterly reviews, absent a finding by FTA that a recipient requires more frequent oversight, and providing a process for such a recipient to return to quarterly reviews. In addition, the rule proposed applying project management oversight to major capital projects receiving Federal financial assistance under any provision of Federal law.

After reviewing public comments and making some corresponding changes, FTA now amends and finalizes its project management oversight rule.

II. Summary of NPRM Comments and FTA's Responses

FTA received 69 discrete comments from 17 commenters, including one comment from a mayoral office expressing general support for the proposed rule. Two comments were outside the scope of the proposed rule and are not addressed in this document. One of the comments was a question about the criteria for applying for an FTA grant. Another comment regarded PMOC procurement, which is not addressed in the regulation.

Cost Threshold—Application

One transit agency sought clarification as to when FTA would determine a project had met the cost threshold, thus triggering application of the project management oversight (PMO) regulation to the project. The commenter suggested that the independent cost estimate, receipt of project bids, or the final funding decision should initiate the threshold determination.

In response, FTA has determined that for Capital Investment Grants (CIG) projects, FTA will use the cost estimate provided by the project sponsor when the project enters the CIG Project Development phase and, for non-CIG projects, FTA will use the cost estimate provided by the project sponsor after a National Environmental Policy Act (NEPA) decision is made by FTA. If bid numbers are available, then they will be considered in estimating the baseline cost. Two commenters suggested that subsequent to FTA's acceptance of a project's funding plan, if a project's Federal investment increases to above $100 million or the total project cost increases during project delivery to more than $300 million, project management oversight should be implemented based on project risk and not funding actions. An industry consultant commented that the threshold should remain based on the total cost of the project being $100 million or more because public transportation infrastructure is a public resource, and the source of funding is irrelevant when determining oversight.

Since higher-cost projects generally tend to involve higher risk, FTA will utilize the cost threshold as a base criterion. If a project's proposed Federal investment and total cost increase during project delivery to meet the $100 million and $300 million thresholds, the project will be subject to project management oversight. However, FTA may determine, pursuant to revised 49 CFR 633.5(e) and 633.19, to exclude a project from oversight that exceeds the thresholds or to require oversight for a project that does not meet the thresholds on a case-by-case basis. FTA will utilize its risk evaluation tool in making this determination. Regarding which projects would be eligible for project management oversight services under § 633.11, a transit agency asked FTA to clarify whether covered projects would include those utilizing Federal loans, such as Transportation Infrastructure Finance and Innovation Act (TIFIA).

Major capital projects will include those utilizing Federal loans, such as TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF), because 49 U.S.C. 5327(a) applies the project management oversight requirements to major capital projects for public transportation funded under any provision of Federal law.

A metropolitan transportation agency suggested that the $100 million Federal investment threshold language in revised § 633.5(e) should clearly state that it is limited to CIG dollars to eliminate confusion that could result from use of funds from other Federal resources. Pursuant to 49 U.S.C. 5327(a), this regulation is not limited to CIG projects but covers all Federally-funded major capital projects for public transportation, so the Federal share threshold is based on all Federal funds in a project. For a CIG project, the Federal share will include all Federal money in the project, regardless of source, not just the CIG share of funds.

Cost Threshold—Amount

Four commenters, including two transit agencies and two trade associations, suggested that FTA raise the total project cost threshold in revised § 633.5(e) to $500 million for parity with Federal Highway Administration (FHWA).

FTA considered cost thresholds of $1 billion, $500 million, $300 million, and $100 million. A key consideration for selecting $300 million as the cost threshold was that it reflects the threshold Congress chose to distinguish Small Starts projects from New Starts projects in the CIG program. New Starts projects have more steps to complete in

the CIG process and tend to be more complex, potentially requiring more oversight. Because of the number of higher-risk projects in the $300 million to $500 million range, FTA is not adopting the $500 million threshold.

A State DOT expressed concern that the proposed cost threshold was too high and would accordingly leave a void between the existing PMO responsibilities and the FTA-supported State Safety Oversight Agency (SSOA) and degrade safety.

FTA notes that project management oversight is not the same as State safety oversight. FTA conducts project management oversight of major capital projects via its PMOCs pursuant to 49 U.S.C. 5327, whereas SSOAs oversee rail fixed guideway public transportation safety pursuant to 49 U.S.C. 5329(e). Although FTA's oversight of major capital projects includes oversight of safety and security management plans and the project sponsors' readiness to enter revenue service, this is separate and distinct from the responsibilities of SSOAs and their rail transit agencies' capital projects.

Project Sponsor Input

A trade association and two transit agencies noted that FTA should involve the project sponsor in decision-making throughout the PMO process, including initiation of PMO services, exclusion from the PMO program, basic requirements, and implementation of a project management plan (PMP). A trade association and an individual suggested that there should be an element of scalability to project management oversight, depending on the experience level of the project sponsor.

FTA will have conversations with project sponsors on a case-by-case basis to discuss the project risks and determine when to begin project management oversight or whether a project should be included or excluded from project management oversight under revised 49 CFR 633.5(e) and 633.19.

Initiating Project Management Oversight

Four commenters requested clarification on the initiation of project management oversight under § 633.13. One commenter noted that a model for the analytical process to be used by the Administrator to ''maximize transportation benefits and cost savings'' would be difficult to develop and that ''transportation benefits'' is an ambiguous term. A transit agency commented that oversight at the project development phase may be premature and questioned how in practice this rule would apply for projects that utilize the design-build or progressive design-build methodology. Another agency recommended that project management oversight begin after the locally preferred alternative (LPA) has been adopted and the FTA Administrator and the project sponsor determine that design and engineering work is sufficiently mature for the development of a reasonably reliable project cost, schedule, and PMP.

Section 5327 of title 49, United States Code, stipulates that project management oversight should start at the project development phase unless the Administrator determines that initiating services at another stage would maximize the transportation benefits and cost savings. The oversight work generally will begin after the selection of the LPA, and the level of oversight will be risk-based. As is currently the case, there will be no oversight reviews prior to the beginning of project development. FTA will have conversations with project sponsors early in project development regarding the level and scope of oversight reviews that will be conducted on the project, and oversight will only be initiated if the sponsors have enough data available for meaningful reviews.

Four commenters, including transit agencies and a trade association, proposed changes to the definition of project development. A coalition of transit agencies noted that project sponsors often undertake significant design and engineering and adopt the LPA well before submitting a formal request to enter the Project Development phase of the CIG program. The commenters suggested that the definition of project development be aligned with 49 U.S.C. 5309(d)(1)(B) and FTA's 2016 Final Interim Policy Guidance on the CIG Program.

Section 5327 of title 49, United States Code, uses the term ''project development'' more generically, and not in the specific way it is used under 49 U.S.C. 5309(d)(1)(B). Section 5309(d)(1)(A) only requires the initiation of NEPA, but not completion of NEPA, prior to entry into project development, so the LPA may not have been chosen before the project enters the Project Development phase of the CIG process. Since project management oversight applies to both CIG and non-CIG projects, FTA will remove the reference to the LPA in the project development definition under § 633.5 and add a reference to the LPA under § 633.13 as an example of when PMO generally will be initiated.

One commenter noted that guidelines and tools must be developed to evaluate progress in project development, since many of the services are out-sourced by recipients.

FTA notes it has developed tools, such as its oversight procedures, to track the progress of the major capital projects. FTA has also published guidelines and handbooks, available on its Guidance Center,[1] and worked with the National Transit Institute to develop a number of courses to help support the industry.

Designating a Major Capital Project

Two transit agencies, a coalition of transit agencies, and a trade association expressed concern that the amended definition of ''major capital project'' would exclude all Small Starts projects and suggested that FTA allow project sponsors to ''opt-in'' to project management oversight for projects that would otherwise not meet the definition of major capital project. Per revised § 633.5(e), the Administrator may designate a project a major capital project if he or she determines a project would benefit from project management oversight. FTA will take into consideration requests by project sponsors to opt-in to the PMO process. A transit agency sought clarification of this opt-in provision and questioned whether there would be a process to appeal the Administrator's designation of a project as a major capital project that would otherwise not meet the regulatory definition. Another transit agency commented that FTA should apply the provision sparingly.

FTA utilizes a risk-based approach to its oversight and will consider risks when designating a project as a major capital project. Section 5327 of title 49, United States Code, grants the Secretary the authority to define a major capital project through this regulation, which includes the discretion to deem projects that do not meet the thresholds to be major capital projects based on risk. FTA will consider inputs from project sponsors in making a final decision.

Excluding a Major Capital Project

A coalition of transit agencies, a transit agency, and an industry professional sought clarification on the process outlined in § 633.19 for excluding projects meeting the definition of major capital project from project management oversight.

FTA will make this determination case-by-case based on an analysis of the risks associated with each project.

[1] *https://www.transit.dot.gov/guidance.*

Project Management Plan—Basic Requirement

A PMOC commented that FTA should require all projects accepted into the CIG program to prepare and submit for FTA's approval a PMP, prior to receiving a grant. The commenter suggested that any decision to exclude a project from project management oversight should not be made at the outset, when a project enters project development. Instead, the commenter stated that decision should be made after the sponsor has demonstrated to FTA, through its PMP and other preparations, that it has the management capacity and capability and other resources in place to complete the project successfully. The commenter suggested that a PMOC should be assigned to the project during project development as stated in revised § 633.13, which addresses the initiation of PMO services. Similarly, a regional transportation agency commented that PMOCs should continue to review the readiness of both Small and New Start projects to ensure agencies are ready to be successful with these CIG projects.

In response, FTA notes that pursuant to the 49 U.S.C. 5309(g)(5) policy guidance, all CIG projects are required to have an approved PMP before FTA will enter into a construction grant agreement. In addition, all CIG projects will receive oversight regardless of cost or Federal share until they receive a construction grant agreement.

A transit agency commented that while the definition of major capital project includes rehabilitation and modernization projects that meet the cost and Federal funding thresholds, it is unclear how these thresholds for oversight would apply to annual capital asset renewal programs at transit agencies. The commenter noted that § 633.21, which outlines the basic requirement for a PMP, implies that this regulation applies to specific, discrete projects for which Federal funding is specifically solicited. The commenter requested that FTA confirm this rule would not apply to ongoing capital asset renewal programs or clarify how the definitions would be applied, *e.g.,* whether the thresholds would be applied on an annual basis or by specific contract.

Capital asset renewal programs at transit agencies generally are made up of a list of projects with cost, scope, and schedule at the outset and then incrementally funded. Once a project is defined with a specific cost and scope, that cost estimate and the Federal funding assumed for the project becomes the basis for determining if it meets the thresholds and if the oversight regulation will apply.

Project Management Plan—Applicability and Contents

Three transit agencies, a coalition of transit agencies, a PMOC, and a trade association provided comments regarding the contents of the PMP under § 633.25. One transit agency commented that the content requirements of § 633.25 are oriented towards a project in construction and suggested either limiting those to reflect the project development phase or changing the phase in which the PMP must be developed to a later phase. Another transit agency commented that the statement beginning in § 633.25, which outlines the PMP contents, should be amended to include the term ''phase'' to acknowledge that the PMP is iterative and reflects the information available at the time it is developed.

FTA notes that while some PMP elements such as a detailed construction schedule, construction staff, and others will not be available at the early stages of the project, most of the PMP items listed are important and should be developed early (at least in some form) at the project development phase, with additional details provided as the project progresses. FTA will add the term ''phase'' to the statement in § 633.25 to provide more clarity.

A coalition of transit agencies commented that proposed § 633.25(k) through (n), proposed to expand the contents of the PMP greatly, noting that this information has not been previously required by FTA, is not required by statute, and adds a substantial cost to projects. Another transit agency requested that FTA detail the anticipated content for compliance with subsection (n) (management of risks, contingencies, and insurance) and perform an assessment of the potential burden on project sponsors and publish it for public review and comment before determining whether the additions should be in the final PMO rule. One commenter asked whether the Risk and Contingency Management Plan (RCMP) would still be a required subplan of the PMP, noting the NPRM appears to fold the subplan into the PMP.

In response, FTA notes that, other than subsection (n), all the project management elements listed in the NPRM are expressly required by 49 U.S.C. 5327. Section 633.25(n), addressing risk and contingency management, is a standard industry practice and was added based on past experiences and its criticality for project success. This includes a process of identifying, evaluating, and responding to risks, including the management of cost and schedule contingencies and the identification of insurance necessary to minimize risk to the project. The RCMP is a means to address the requirements in § 633.25(n).

One transit agency commented that it is unclear from the NPRM if recipients and project sponsors need to update their existing PMPs to comply with the requirements that FTA proposed to add.

In response, all recipients must comply with the new requirements if their project meets the definition of major capital project, but the plans do not need to be in one single large PMP document. The additional materials may be submitted as individual subplans, so there will be no requirement to go back and consolidate.

A PMOC commented that § 633.25 should include a requirement for a design management plan that defines the roles and responsibilities of the recipient and its consultants, third parties, and the contractor.

The regulation addresses this requirement through § 633.25(a) and (f), which cover organizational structures, functional responsibilities, reporting relationships, and staffing.

A trade association and a transit agency commented that the proposed changes to information requested as part of project management oversight may create redundant information requests as part of other CIG reporting requirements.

There are likely to be overlaps in the reporting requirements for CIG projects under 49 U.S.C. 5309 and the PMP under 49 U.S.C. 5327 if a project sponsor is building more than one project at the same time. FTA does not believe regulatory changes are needed to address potential overlaps in reporting requirements. FTA will work with project sponsors to combine requirements, such as combined quarterly meetings and minor modifications to existing PMPs to reduce redundancies.

Project Management Plan—Due Date and Updates

Two transit agencies and one industry consultant provided comments regarding the implementation of a project management plan under § 633.27. One transit agency noted that FTA should limit the number of revisions required and that there should be some guidance on the reasonableness of FTA comments on the PMP. Specifically, the agency is concerned that there is ambiguity in requiring revisions ''at a new phase'' and where there is a ''significant change'' under § 633.27(b). The industry consultant

added that the term ''periodic,'' regarding the updates required under § 633.25, is vague.

FTA notes that a PMP is a living document that must be updated at many phases of the project (for example as new resources are added or as the project transitions from design into construction). Project sponsors will be given 90 days to submit the PMP upon formal notification from FTA, and FTA generally will approve or disapprove the PMP within 60 days, pursuant to 49 U.S.C. 5327(b). Project sponsors need not wait until they receive notification from FTA to begin working on the PMP. FTA will work with project sponsors to minimize the number of revisions needed, and will provide reasonable comments to streamline the process. Periodic updates to the PMP are required by 49 U.S.C. 5327(a)(11), and FTA intends to require updates or reviews every two years or upon significant changes to the project. A review of the PMP might show that there is no need for an update because nothing significant has changed to the project. FTA will assess significance on a case-by-case basis (*e.g.,* when key staff leave a project or a project is trending towards delays and cost overruns).

One transit agency questioned why § 633.27(c) requires project budget, schedule, financing, ridership estimates, and the status of local efforts to enhance ridership to be updated on a ''periodic basis'' as opposed to when there are changes to those items. Another transit agency commented that the NPRM adds requirements to provide updates for project capital and operating financing, as well as for the operating plan based on the ridership estimates. The commenter also noted that the NPRM requires recipients to submit current data on a major capital project's budget and schedule on a quarterly basis and that such reporting requirements may result in additional costs to recipients or project sponsors.

This provision reflects a statutory requirement under 49 U.S.C. 5327(a)(11). FTA recognizes that there may be limited information on these topics that will need to be updated regularly.

One transit agency requested that project sponsors be given 180 days to submit the PMP.

CIG projects must progress through project development in two years. The 90-day period to prepare the PMP will help move projects through the process in that timeframe. Non-CIG projects should have a PMP in place as early as possible. Stakeholders should be aware that project sponsors do not have to wait for FTA to request a PMP to begin preparing their PMP.

Project Management Plan—Reporting

An industry consultant commented that monthly reporting is the responsible minimum standard. Section 5327 of title 49, United States Code, limits project management oversight to quarterly reviews, but the Administrator maintains discretion to require more frequent oversight if a project is at risk of going over budget or becoming behind schedule.

A transit agency commented that FTA should add a clause clarifying that the § 633.25(l) requirement to submit a quarterly project budget and schedule is met through the project budget and schedule updates submitted with quarterly milestone progress reports. FTA does not intend to duplicate submittals, so one submittal with the quarterly progress report is sufficient.

The agency also commented that under § 633.27(d), FTA proposes to require more frequent compliance reviews of any project that is ''at risk of materially exceeding its budget or falling behind schedule.'' Accordingly, the commenter requested that FTA define ''materially.'' Section 5327(d)(2)(B) of title 49, United States Code, provides FTA the discretion to require more frequent oversight if the recipient has failed to meet the requirements of the PMP and the project may be at risk of going over budget or becoming behind schedule. In response to the comment, FTA has added to § 633.27(d) that ''Budget and schedule changes will be analyzed on a case-by-case basis, but FTA generally will consider any cost increase or schedule delay exceeding 5 percent as a material change.''

Regulatory Cost Savings

One anonymous commenter noted that FTA's cost savings analysis was too low. The commenter suggested that $32 million was a more appropriate estimate, because of the 1 percent drawdown for oversight, and questioned how the remaining $23.9 million in savings would be applied, noting that FTA provided no economic analysis of that amount.

The drawdown for oversight from this program is combined with the drawdown from other FTA programs and then budgeted for several oversight activities. The $3.2 billion amount is the total cost of the projects and not the annual budgets for the projects. The $8.1 million amount, on the other hand, is the estimated savings in oversight cost per year and reflects the money that would have been spent on external contractors. FTA will continue to manage its oversight resources judiciously to ensure that all its projects and programs receive sufficient oversight.

Another commenter noted that the oversight cost savings estimate of $11 million is flawed, because simply multiplying hours does not account for the potential for severe project overruns, delays, and quality problems.

FTA's analysis is an approximation, but § 633.5(e)(2) allows the Administrator to determine on a case-by-case basis that certain projects should be subject to project management oversight based on an assessment of risk, which would include an analysis of the likelihood of budget and schedule overruns.

Financing the PMO Program

A PMOC commented that 49 U.S.C. 5338(f)(1) and (2) does not specify that the oversight funds will be used to contract for project management oversight services in connection with a major capital project as set forth in the current version of § 633.19. The commenter noted that the funds may be used for other activities as described in the statute and would not be available to fund the project management oversight program as intended. The commenter recommended that the current text of § 633.19 be retained to ensure that the oversight takedown be used as originally intended.

FTA notes that project management oversight is an eligible expense of funds authorized for oversight, and other activities are authorized to be funded from that source as well. However, project management oversight is a statutory requirement for all projects meeting the definition of major capital project, per 49 U.S.C. 5327(a) and (d)(2), and FTA will utilize oversight funds as authorized for that purpose.

Access to Information

An industry consultant suggested that § 633.27 should include the requirement of affidavits attesting to full compliance with Federal and State Disadvantaged Business Enterprise (DBE) and Minority Business Enterprise (MBE) programs, a detailed report of employment of relatives, in-laws, and neighbors on the project, and waiver of confidentiality for the purposes of immediate and unannounced government inspection of invoices, receipts, payroll, and payments related to project. Similarly, another commenter requested that § 633.15 include coverage of procurement and civil rights, and the tie to contract administration based on 2 CFR part 200 and FTA Circular 4220.1F.

The commenter noted that there is no mention of the requirements for Americans with Disabilities Act (ADA), DBE, and Title VI requirements in the regulation. The regulation addresses the technical oversight of the projects. Reviews such as DBE and ADA compliance are critical but are not addressed primarily through project management oversight. Instead, these requirements are covered through other areas of FTA oversight, such as triennial reviews.

Definitions

Two parties provided comments on the definition of ''recipient.'' A trade association noted that within the definition of ''recipient'' the term ''sponsor'' is not defined. A transit agency proposed defining ''sponsor'' within the definition in § 633.5(i). Both commenters suggested defining ''sponsor'' as the ''entity designated to deliver the project per the terms set forth in the construction grant agreement.''

In response, FTA has defined ''sponsor'' under § 633.5(j) as ''the entity designated to deliver the project per the terms set forth in the grant agreement.''

A transit agency and a trade association provided input on the definition of ''full funding agreement.'' Both commenters suggested keeping a definition of grant agreement in the regulation and utilizing the term ''construction grant agreement,'' which would encompass grant agreements for various Federal funding programs including New Starts, Small Starts, Core Capacity, BUILD, and INFRA under which major capital transit projects may receive Federal funds.

Because neither term is used in the regulation, a definition is unnecessary. Further, the purpose of a full funding grant agreement is addressed under 49 U.S.C. 5309.

A transit agency requested clarification on adding ferries to the definition of ''fixed guideway'' under § 633.5(c). Specifically, the commenter sought an explanation of what the fixed guideway of a ferry system includes and the anticipated impact of this change in the fixed guideway definition with respect to project management oversight.

Ferries are included in the definition of a fixed guideway set forth at 49 U.S.C. 5302, which is a ''public transportation facility using and occupying a separate right-of-way for the exclusive use of public transportation, using rail, using a fixed catenary system; for a passenger ferry system; or for a bus rapid transit system.'' For a passenger ferry system, this would include all infrastructure necessary for the operation of the system, *e.g.,* terminals, ferry boats, and related equipment.

A transit agency requested a definition of ''risk-informed monitoring'' which is referenced in the definition for project management oversight in § 633.5(g).

FTA will not define this term in the regulation, because 49 U.S.C. 5327(d)(2)(B) makes clear that FTA must assess whether projects are at risk of going over budget or becoming behind schedule. ''Risk-informed monitoring'' in this context means that the oversight will be scaled based on the level of risk of the project.

A transit agency noted that FTA previously solicited comments on alternate definitions of a Federal project and suggested that FTA continue with efforts to refine the Federal project definition and consider opportunities to incorporate similar lines-of-thinking in the proposed rule.

The definition of ''Federal project'' is unrelated to this rule. Per 49 U.S.C. 5327(a), the project management plan requirements, and this regulation implementing the statute, apply to all major capital projects for public transportation under any provision of Federal law.

Oversight Procedures

A transit agency commented that FTA should update its project management oversight procedures (OPs) concurrent with finalizing the PMO rule to help ensure that the actual guidelines followed by FTA's contractors align with the final rule. The commenter further suggested that the draft OPs be subject to formal public review and comment before issuance. FTA notes that its OPs are contractual documentation for FTA's contractors and not guidance for recipients. Thus, a public review and comment process is not required.

Incorporating Another PMP

FTA received two comments pertaining to the implementation of a PMP under § 633.29. An industry consultant commented that the incorporation of ''applicable elements from a previously approved project management plan or to incorporate procedures that a recipient uses to manage other capital projects'' is not sufficient planning and increases risk. A transit agency suggested maintaining the section or adding a similar provision to § 633.25.

In response, the intent of the referenced clause in § 633.29 was to avoid unnecessary duplication. For example, some PMP elements such as document control procedures, quality control procedures, and material testing policies generally will not change much from project to project, especially when the project sponsor is building multiple projects at the same time. In the final rule, FTA is rescinding § 633.29, because the statute mandates that the PMP for each major capital project include the elements in § 633.25(k) through (m), and FTA does not have the discretion to waive these elements of the plan.

III. Regulatory Analyses and Notifications

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the rule's economic analysis.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and Department of Transportation (DOT) Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. The rule amends the definition of a ''major capital project'' under 49 CFR part 633 by raising the total project cost threshold and adding a minimum Federal share, thereby reducing the number of public transportation projects subject to project management oversight. This action complies with Executive Orders 12866 and 13563 to improve regulation, as well as DOT's regulatory requirements at 49 CFR part 5.

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. FTA has examined the potential economic impacts of this rulemaking and has determined that this rulemaking is not economically significant because it will not result in an effect on the economy of $100 million or more. In addition, this rule does not have an impact on another agency and does not materially alter the budgetary impacts of entitlements,

grants, user fees, or loan programs. This rule does not raise novel legal issues.

To calculate the benefits and annual cost savings from this proposed rule, FTA evaluated its project management oversight contracts for major capital projects from 2013 through 2018. This period was chosen to reflect changes to FTA's program management oversight procedures after MAP–21 was enacted in 2012. This period included several emergency relief program projects under 49 U.S.C. 5324 to repair significant damages to public transportation infrastructure resulting from Hurricane Sandy, which FTA also analyzed.

Using FTA's risk evaluation tool, FTA evaluated projects in construction during that period based on ten key risk factors to produce a risk score from 0–100. Projects were then assigned a risk range based on the calculated score, with low-risk projects in the range of 0–39, medium-risk projects from 40–55, and high-risk projects from 56–100. This evaluation indicated that most high-risk projects, including 18 of the 22 projects in the high-risk range, involved total project costs of over $300 million. While removing project management oversight from projects with total costs between $100 and $300 million may increase the risk of materially exceeding budget or falling behind schedule for some projects, there are currently only four high-risk projects in this range, and under the rule, FTA may deem certain projects that do not meet the dollar-amount thresholds a ''major capital project'' to mitigate unacceptable risk. In addition, reducing the number of lower-risk projects undergoing project management oversight will allow FTA to focus on higher-risk projects while yielding annual cost savings to FTA and its recipients.

FTA calculated the average total cost of oversight for projects in construction during that period that would not have qualified as major capital projects under the default threshold of this proposed rule. FTA estimates that an average of 38.3 projects annually, including emergency relief program projects, would no longer require additional oversight under the default threshold.

This rule would reduce recipients' labor hours for oversight procedures, which include attending meetings, preparing quarterly reports and other requested documents, and accompanying contractors onto project construction sites. To estimate the potential cost savings for project sponsors, FTA staff examined the current projects in construction that would no longer qualify as major capital projects under the rule and estimated the level of effort required for oversight procedures. For two projects, FTA received input from recipients. Assuming variations in the level of effort based on the complexity of the project, FTA estimated that the labor hours required for recipients ranges from 1.7 to 2.3 times FTA's level of effort of approximately 39,477 hours per year for project management oversight procedures. Accordingly, FTA used an average factor of two and determined that the default threshold to qualify as a major capital project under the proposed rule would reduce the level of effort required for project sponsors by an average of 78,955 hours annually at a wage rate of $139.67 based on an average of the Bureau of Labor Statistics rate for Construction Managers and the PMOC loaded rate for contractors. This burden reduction would result in an annual cost savings to project sponsors of approximately $11 million.

In addition, the rule reduces the level of effort required under FTA's project management oversight contracts and yields corresponding cost savings to FTA. Removing oversight from an average of 38.3 projects annually, at an average wage rate of $206, would yield annual cost savings to FTA of approximately $8.1 million.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of this rule on small entities, and certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. In addition, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. Federal public transportation law permits this type of flexibility.

Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and FTA determined that this action will not have a substantial direct effect or Federalism implications on the States. FTA also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this rulemaking.

Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FTA has analyzed this rule under the Paperwork Reduction Act and determined that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

NEPA requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), which pertains to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property

Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (77 FR 27534) require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and/or low-income populations. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, on July 17, 2014, FTA issued a circular to update its EJ Policy Guidance for Federal Transit Recipients (*www.fta.dot.gov/legislation_law/12349_14740.html*), which addresses administration of the Executive Order and DOT Order.

FTA has evaluated this rule under the Executive Order, the DOT Order, and the FTA Circular and has determined that this rulemaking will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Executive Order 12988 (Civil Justice Reform)

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this rule will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and determined that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

Anyone may search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment, or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5327, which requires the Secretary to conduct oversight of major capital projects and to promulgate a rule for that purpose that includes a definition of major capital project to delineate the types of projects governed by the rule.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 633

Grant programs-transportation, Mass transportation.

K. Jane Williams,

Deputy Administrator.

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 5327, revise 49 CFR part 633 to read as follows:

PART 633—PROJECT MANAGEMENT OVERSIGHT

Subpart A—General Provisions

Subpart B—Project Management Oversight Services

Subpart C—Project Management Plans

Authority: 49 U.S.C. 5327; 49 U.S.C. 5334; 49 CFR 1.90.

Subpart A—General Provisions

§ 633.1 Purpose.

This part implements 49 U.S.C. 5327 regarding oversight of major capital projects. The part provides for a two-part program for major capital projects receiving Federal financial assistance. First, subpart B discusses project management oversight, designed primarily to aid FTA in its role of ensuring successful implementation of Federally-funded projects. Second, subpart C discusses the requirement that, to receive Federal financial assistance for a major capital project for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal law, a recipient must prepare a project management plan approved by the Administrator and carry out the project in accordance with the project management plan.

§ 633.3 Scope.

This rule applies to a recipient of Federal financial assistance undertaking a major capital project for public transportation under Chapter 53 of Title 49, United States Code, or any other provision of Federal Law.

§ 633.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Days means calendar days.

Fixed guideway means any public transportation facility: Using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a bus rapid transit system.

FTA means the Federal Transit Administration.

Except as provided in § 633.19, *Major capital project* means a project that:

(1) Involves the construction, expansion, rehabilitation, or modernization of a fixed guideway that:

(i) Has a total project cost of $300 million or more and receives Federal funds of $100 million or more; and

(ii) Is not exclusively for the acquisition, maintenance, or rehabilitation of vehicles or other rolling stock; or

(2) The Administrator determines to be a major capital project because project management oversight under this part will benefit the Federal government or the recipient, and the project is not exclusively for the acquisition, maintenance, or rehabilitation of rolling stock or other vehicles. Typically, this means a project that:

(i) Involves new technology;

(ii) Is of a unique nature for the recipient; or

(iii) Involves a recipient whose past record indicates the appropriateness of extending project management oversight under this part.

Project development means the phase in which planning, design and engineering work is undertaken to advance the project from concept to a sufficiently mature scope to allow for the development of a reasonably reliable project cost, schedule, and project management plan.

Project management oversight means the risk-informed monitoring of the recipient's management of a major capital project's progress to determine whether the project is on time, within budget, in conformance with design and quality criteria, in compliance with all applicable Federal requirements, constructed to approved plans and specifications, delivering the identified benefits, and safely, efficiently, and effectively implemented.

Project management plan means a written document prepared by a recipient that explicitly defines all tasks necessary to implement a major capital project. A project management plan may be a single document or a series of documents or sub plans integrated with one another into the project management plan either directly or by reference for the purpose of defining how the recipient will effectively manage, monitor, and control all phases of the project.

Recipient means a direct recipient of Federal financial assistance or the sponsor of a major capital project.

Sponsor means the entity designated to deliver the project per the terms set forth in the grant agreement.

Subpart B—Project Management Oversight Services

§ 633.11 Covered projects.

(a) The recipient is using funds made available under Chapter 53 of Title 49, United States Code, or any other provision of Federal law; and

(b) The project is a major capital project.

§ 633.13 Initiation of project management oversight services.

Project management oversight services will be initiated as soon as practicable, once the Administrator determines that this part applies. In most cases, this means that project management oversight will begin during the project development phase of the project, generally after the locally preferred alternative has been chosen (if applicable), unless the Administrator determines it more appropriate to begin oversight during another phase of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

§ 633.15 Access to information.

A recipient for a major capital project shall provide the Administrator and the project management oversight contractor chosen under this part access to its records and construction sites, as reasonably may be required.

§ 633.17 Project management oversight contractor eligibility.

(a) Any person or entity may provide project management oversight services in connection with a major capital project, with the following exceptions:

(1) An entity may not provide project management oversight services for its own project; and

(2) An entity may not provide project management oversight services for a project if there exists a conflict of interest.

(b) In choosing private sector persons or entities to provide project management oversight services, the Administrator uses the procurement requirements in the government-wide procurement regulations, found at Chapter 1 of title 48, Code of Federal Regulations.

§ 633.19 Exclusion from the project management oversight program.

The Administrator may, in compelling circumstances, determine that a project meeting the criteria of § 633.5(e)(1) is not a major capital project because project management oversight under this part will not benefit the Federal government or the recipient. Typically, this means a project that:

(a) Involves a recipient whose past record indicates the appropriateness of excluding the project from project management oversight under this part; and

(b) Involves such a greater level of financial risk to the recipient than to the Federal government that project management oversight under this part is made less necessary to secure the recipient's diligence.

Subpart C—Project Management Plans

§ 633.21 Basic requirement.

(a) If a project meets the definition of major capital project, the recipient shall submit a project management plan prepared in accordance with § 633.25, as a condition of Federal financial assistance.

(b)(1) The Administrator will notify the recipient when the recipient must submit the project management plan. Normally, the Administrator will notify the recipient sometime during the project development phase. If the Administrator determines the project is a major capital project after the project development phase, the Administrator will inform the recipient of the determination as soon as possible.

(2) Once the Administrator has notified the recipient that it must submit a project management plan, the recipient will have a minimum of 90 days to submit the plan.

§ 633.23 FTA review of a project management plan.

Within 60 days of receipt of a project management plan, the Administrator will notify the recipient that:

(a) The plan is approved;

(b) The plan is disapproved, including the reasons for the disapproval;

(c) The plan will require modification, as specified, before approval; or

(d) The Administrator has not yet completed review of the plan, and state when it will be reviewed.

§ 633.25 Contents of a project management plan.

A project management plan must be tailored to the type, costs, complexity, and phase of the major capital project, and to the recipient's management capacity and capability. A project management plan must be written to a

level of detail sufficient to enable the recipient to determine whether the necessary staff and processes are in place to control the scope, budget, schedule, and quality of the project, while managing the safety and security of all persons. A project management plan must be developed with a sufficient level of detail to enable the Administrator to assess the adequacy of the recipient's plan. At a minimum, a recipient's project management plan must include:

(a) Adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(b) A budget covering the project management organization, appropriate contractors and consultants, property acquisition, utility relocation, systems demonstration staff, audits, contingencies, and miscellaneous payments as the recipient may be prepared to justify;

(c) A construction schedule for the project;

(d) A document control procedure and recordkeeping system;

(e) A change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(f) A description of organizational structures, management skills, and staffing levels required throughout the construction phase;

(g) Quality control and quality assurance functions, procedures, and responsibilities for project design, procurement, construction, system installation, and integration of system components;

(h) Material testing policies and procedures;

(i) Internal plan implementation and reporting requirements including cost and schedule control procedures;

(j) Criteria and procedures to be used for testing the operational system or its major components;

(k) Periodic updates of the project management plan, especially related to project budget and schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;

(l) The recipient's commitment to submit a project budget and project schedule to the Administrator quarterly;

(m) Safety and security management; and

(n) Management of risks, contingencies, and insurance.

§ 633.27 Implementation of a project management plan.

(a) Upon approval of a project management plan by the Administrator the recipient shall begin implementing the plan.

(b) Generally, a project management plan must be modified if the project is at a new phase or if there have been significant changes identified. If a recipient must modify an approved project management plan, the recipient shall submit the proposed changes to the Administrator along with an explanation of the need for the changes.

(c) A recipient shall submit periodic updates of the project management plan to the Administrator. Such updates shall include, but not be limited to:

(1) Project budget;

(2) Project schedule;

(3) Financing, both capital and operating;

(4) Ridership estimates, including operating plan; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(d) A recipient shall submit current data on a major capital project's budget and schedule to the Administrator on a quarterly basis for the purpose of reviewing compliance with the project management plan, except that the Administrator may require submission more frequently than on a quarterly basis if the recipient fails to meet the requirements of the project management plan and the project is at risk of materially exceeding its budget or falling behind schedule. Budget and schedule changes will be analyzed on a case-by-case basis, but FTA generally will consider any cost increase or schedule delay exceeding five percent as a material change. Oversight of projects monitored more frequently than quarterly will revert to quarterly oversight once the recipient has demonstrated compliance with the project management plan and the project is no longer at risk of materially exceeding its budget or falling behind schedule.

§ 633.29 [Reserved]

[FR Doc. 2020–18819 Filed 9–22–20; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–20–MFH–0017]

RIN 0575–AD17

Rental Assistance and Asset Management for the Multi-Family Housing Direct Loan Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or the Agency) is proposing to amend its regulation to implement changes related to the development of a sustainable plan for the Rental Assistance (RA) program, including new Agency flexibilities in the managing of the RA distribution and integrate new asset management policies. The regulation changes are designed to provide flexibility, more economically utilize the RA, and to improve the efficiency in managing the assets in the Direct Loan portfolio.

DATES: Comments on the proposed rule must be received on or before November 23, 2020.

ADDRESSES: You may submit comments to this rule by utilizing the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Housing Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RHS–20–MFH–0017 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

FOR FURTHER INFORMATION CONTACT: Jennifer Larson, Multi-Family Housing Portfolio Management Division, Rural Housing Service, Stop 0782, 1400 Independence Avenue SW, Washington, DC 20250–0782.

SUPPLEMENTARY INFORMATION:

Background and Summary of Changes

The existing statutory authority for the Multi-Family Housing (MFH) programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make housing loans to farmers. As a result of this Act, the Agency established single-family and multi-family housing programs. The MFH program is administered, subject to appropriations, by the U.S. Department of Agriculture (USDA) as authorized under Sections 514, 515 and, 516 and 521 of the Housing Act of 1949, as amended (42 U.S.C. 1484, 1485, and 1486, and 1490). Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited-profit entities, establishment of a rental assistance program, and imposition of a number of restrictive-use provisions and prepayment restrictions.

The Agency operates a multifamily rural rental housing direct loan program under section 515 and section 514 for farm labor housing. The Agency also provides grants under the section 516 farm labor housing program. The direct loan program employs a public—private partnership by providing subsidized loans at an interest rate of 1 percent to developers to construct or renovate affordable rental complexes in rural areas. This 1 percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit (LIHTC) proceeds. This program is typically used in conjunction with the RHS section 521 Rental Assistance (RA) program, which provides project-based rental assistance payments to property owners to subsidize tenants' rents to an affordable level. With rental assistance, tenants pay 30 percent of income toward their rent (including utilities). Some section 515 projects also utilize the U.S. Department of Housing and Urban Development's (HUD's) section 8 project-based assistance, which enables additional very low-income families to be served.

The direct loan and grant programs under sections 514 and 516 provide low interest loans and grants to provide housing for farmworkers. These workers may work either at the borrower's farm (''on-farm'') or at the borrower's or any other farm (''off-farm'') so long as the tenants meet program eligibility requirements. Section 521 rental assistance is available for off-farm labor housing, but not on-farm labor housing. The Agency has decided to not provide RA to on-farm labor housing units because of its limited availability.

The Rural Housing Service (RHS) published a proposed rule on June 2, 2003 (68 FR 32872) to streamline and consolidate 14 regulations into 7 CFR part 3560. Part 3560 sets forth requirements, policies, and procedures for originating, processing, and servicing Rural Development's MFH direct loans and grants. An interim rule was published November 26, 2004 (69 FR 69032–69176) to implement those changes, with an effective date of February 24, 2005. The Agency received more than 2,800 comments on the Proposed Rule published in the **Federal Register** on June 2, 2003, (68 FR 32872). While the issues of concern tended to vary, the Agency noted that some issues were raised by more than one commenter. Topics discussed by five or more commenters were presented and organized by subpart within the interim rule published and addressed.

This proposed rule will amend the current interim rule in order to: (1) Implement programmatic changes related to development of a ''sustainability plan'' for the Rental Assistance (RA) Program, including new Agency flexibilities in managing the RA distribution; (2) integrate new asset management policies; and (3) incorporate technical corrections to clarify reference and formatting issues in the regulation.

Rental Assistance Changes

The changes proposed are designed to more economically utilize RA, reduce the program cost over time, and provide management flexibilities in the use of funds. The Agency has already implemented several measures to reduce the cost of RA within its already established regulatory authority, but

amendments to the regulation are needed to ensure effectiveness and true cost savings to the RA program. The Agency experienced dramatic funding reductions in Fiscal Year 2013, which has highlighted the need for adaptability in delivering RA to as many beneficiaries as possible.

This proposed rule establishes the historical practice of using unused Rental Assistance obligation balances from properties that have left the portfolio for renewal purposes. The Agency has actively used RA balances from properties that have paid off the Rural Development mortgage or natural maturity. These funds supplement the annual appropriation and make efficient use of inactive funds. Inclusion of this process in the regulation will increase transparency on the management of RA funds.

• This proposed rule would add language at § 3560.259(d) regarding the transfer of obligation balances from RA Agreements from properties whose mortgages have naturally matured.

The Consolidated Appropriations Act, 2019 (Pub. L. 116–6, February 2, 2019) for the Rental Assistance Program requires ''. . . that rental assistance provided under agreements entered into prior to fiscal year 2019 for a farm labor multi-family housing project financed under section 514 or 516 of the Act may not be recaptured for use in another project until such assistance has remained unused for a period of 12 consecutive months.'' Accordingly, the Agency is adding the 12-month term for transfer of unused RA in Section 514 Farm Labor Housing.

• Amending § 3560.259(a)(4) to clarify that when any rental assistance units have not been used for a 6-month period (for Section 515 properties) or 12 months (for Section 514 properties) they will be eligible for transfer.

This proposed rule also proposes to change the following additional RA provisions:

• Amending § 3560.11 definitions of *Domestic farm laborer, Management agreement* and *Management fee* to reflect requirements in the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, March 23, 2018) permanently amending Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)(A)) that the FLH tenant eligibility includes ''a person legally admitted to the United States and authorized to work in agriculture.''

• MFH borrowers had previously identified certain requirements within Rural Development's regulations governing Supervised Bank Accounts that are difficult to obtain in the current commercial banking environment. This is mainly due to the current modern electronic banking environment. Accordingly, this proposed rule would add a paragraph at § 3560.65 to allow the Agency to establish an escrow account to collect and disperse funds. This will allow the Agency to establish agency-held escrows which historically was provided for in the loan documents but was not addressed in the regulation.

• Current regulation allows for management agents to earn a management fee for the performance of certain tasks. The Agency intends to clarify that the performance of the agent in meeting the Management Certification requirements will be assessed in determining the allowable fee. This proposed rule would add language at § 3560.102 that performance assessments of management agents will be used when determining the allowable management fee. It will also specify what are allowable management fee expenses and require that management plans include a listing of the charges covered by the fee.

• Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities. At § 3560.104, this proposed rule would raise the threshold for rental units from four units or more to five or more units. This will allow the Agency to align with the Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

• Current regulation does not contain a provision within RA eligibility for tenants that are delinquent on Agency Unauthorized Assistance Repayment Agreements and how should not be eligible to receive federal assistance. This proposed rule would change § 3560.254(c) to clarify that tenants are no longer eligible to receive RA if they are delinquent on their Unauthorized Assistance Repayment Agreement.

Asset Management Changes

The changes proposed in this rule are designed to improve the efficiency in managing the assets in the Direct Loan portfolio. These consist of properties financed under the Section 515 Rural Rental Housing Program and the Section 514 Farm Labor Housing Program. Since publication of the interim rule in 2004, management policies have changed in important areas and certain statutory provisions were not originally included in the interim rule.

Some of these changes are highlighted in:

• Management fees are an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. This proposed rule would change § 3560.102 to specify what are allowable management fee expenses and require that management plans include a listing of the charges covered by the fee. This will improve the use of the regulation by the borrower and Agency by specifying which expenses can be charged against property income and which must be paid out of the earned management fee.

• This proposed rule would change § 3560.156(c)(6) to add the Violence Against Women Reauthorization Act to the list of federal laws with which lease requirements must comply. Addition of the Violence Against Women Reauthorization Act (VAWA) to federal law compliance list. The Agency requires borrowers to provide a tenant lease that meets all federal and program regulation requirements. The VAWA and its amendments are added to the list of laws.

• MFH borrowers had previously identified certain procedures and requirements within Rural Development's regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds. This is mainly due to the current electronic banking operations. Section 3560.302(c)(5)(i) will be updated so that Borrowers are no longer required to obtain a collateral pledge if the amount of funds exceed the maximum limit covered by Federal Deposit Insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place. The clarification of 7 CFR 3560.302(c)(5)(iv) will reinforce that all account funds will stay with the property until all outstanding loan balances are paid in full that are securing the property. Language will be added at § 3560.302(c)(5)(vii) to allow for all funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, are considered assets of the property and must be held in trust by the borrower for the loan obligations until used and serve as security, through transfers or assumptions of the Agency loan or grant until all outstanding loan balances are paid in full.

• Changes in § 3560.303 will also address property expenses are

monitored by the Agency to ensure they are proper and reasonable; but as expenses increase, more income is needed, which results in rent increases and additional cost to rental assistance. Since the interim rule was published, borrowers have sought clarification on how expenses should be treated. The Agency has provided periodic guidance to Servicing Officials and borrowers to ensure the appropriate use of project funds. This is in accordance with a recommendation from the Office of the Inspector General (OIG) in their audit ''Review of Rural Rental Housing's Tenant and Owner Data using Data Analytics,'' Audit No. 04901–001–13. MFH properties rely on project income to maintain operations and provide safe, decent and sanitary housing for our residents. Rent increases are necessary at times to generate needed revenue to pay for ongoing maintenance, capital improvements, and immediate repairs, as well as to cover administrative costs associated with management of the property. To achieve these objectives, it is necessary and proper for Servicing Officials to thoroughly review budget submissions, ask questions, and seek documentation that support budget requests or actual expenses. Implementing this change will improve compliance, reduce unnecessary and unsupportable expenses, and result in stronger, more financially stable properties.

○ In § 3560.303(a)(1), the Agency will require that the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c) and will provide a metric for the Agency to determine current or future rent increase requests based on the Borrower's utilization of the reserve account. This will ensure that borrowers are utilizing project revenue for ongoing capital improvements needed to maintain compliance and reduced risk of the property.

○ A change will be made to § 3560.303(c) to add payables as a priority for budget expenditures. This will allow for the Agency to ensure that all payables are being paid from project revenues in a timely manner and not accrued, without agency consent, causing increased costs and penalties and adding risk.

○ In § 3560.303, the Agency will clarify what are allowable project expenses and provide for a comparable ''reasonableness'' test by the Agency. Generally, expenses charged to project operations for expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property.

○ In § 3560.303(b)(1)(vii), the Agency will add the requirements for a non-profit entity to pro-rate certain organizational reimbursable costs across all properties owned by that entity.

• MFH borrowers had previously identified certain procedures and requirements within Rural Development's regulations governing Supervised Bank Accounts that are outdated, obsolete, and no longer feasible in the commercial banking environment as a means of withdrawing reserve account funds. This is mainly due to the current electronic banking operations. Language will be amended at § 3560.306(e)(2) removing the requirement to countersign withdrawals from reserve accounts. This will allow for current electronic banking practices.

• Currently under use of reserve account Borrowers must only inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time without utilization of an agency approved capital needs assessment. A change at § 3560.306(g) requiring that needed capital improvements, based on the needs identified in an Agency approved capital needs assessment, are completed within a reasonable timeframe. This will improve the management and delivery of the MFH program by establishing the authority to require borrower utilization of the reserve accounts as recommended in the Agency approved capital needs assessment (CNA).

Technical Corrections

Other technical changes (moving and consolidating sections, removing duplicative language, language clarifications) will make the regulation easier to use, and promote better compliance with program requirements by borrowers and management agents. The changes include:

• In § 3560.105(f)(10), a change to clarify that if an insurance deductible is met, there is no need to track with a replacement reserve account.

• Section § 3560.152 incorporates changes related to ''age'' ineligibility.

• The Agency has updated the wording of ''State Director'' to ''Leadership Designee'' to allow for future staff flexibility.

• Update § 3560.152 by removing term ''elderly units in mixed housing''.

• Language will be changed in § 3560.154 to correct ''sex'' to ''gender'' and update policy on criminal activity for admissions.

• Update § 3560.205 to include the notification of all household members of rent change effective 30 days from date of notification.

• Section § 3560.252 will now include the Agency's housing voucher program to allow for the proper allowance of rental subsidies.

• In § 3560.402 the Agency will amend language that any loan servicing action will require DIAS accounts to be converted to the current Predetermined Amortization Schedule System (PASS) system of accounting.

Executive Order 12866—Classification

This proposed rule has been determined to be non-significant and; therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Authority

The Rental Assistance Program (RA) is administered subject to appropriations by the U.S. Department of Agriculture (USDA) as authorized under Section 521 of Title V of the Housing Act of 1949 as amended.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that implementation of the rule will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status. No major civil rights impact is likely to result from this rule.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.427—Rural Rental Assistance Payments.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992, submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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List of Subjects in 7 CFR 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs-housing and community development, Insurance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 7 CFR part 3560 is proposed to be amended as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart A—General Provisions and Definitions

§ 3560.8 [Amended]

■ 2. Amend § 3560.8 by removing the words ''State Director'' and adding in their place ''Leadership Designee'' in the last sentence of the paragraph.

■ 3. Amend § 3560.11 by:

■ a. Removing the acronym ''MFHMFH'' wherever it appears in the section and adding ''MFH'' in its place; and

■ b. Revising the definitions of ''Domestic farm laborer'', ''Management agreement'', and ''Management fee'' to read as follows:

§ 3560.11 Definitions.

* * * * *

Domestic farm laborer. A person who, consistent with the requirements in § 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for permanent residence, or a person legally admitted to the United States and authorized to work in agriculture. This definition may include the immediate family members residing with such a person.

* * * * *

Management agreement. A written agreement between a borrower and an IOI management agent or independent fee management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with an approved management certification, Form RD 3560–13, ''Multi-Family Project Borrower's/Management Agent's Management Certification.''

* * * * *

Subpart B—Direct Loan and Grant Origination

■ 4. Amend § 3560.65 by adding paragraph (d) to read as follows:

§ 3560.65 Reserve account.

* * * * *

(d) The agency may establish an escrow account for the collection and disbursement of reserve account funds.

§ 3560.72 [Amended]

■ 5. Amend § 3560.72 by removing the words ''State Director'' and adding in their place ''MFH Leadership Designee'' in the second sentence of paragraph (b).

Subpart C—Borrower Management and Operations Responsibilities

■ 6. Amend § 3560.102 by:

■ a. Revising paragraph (b);

■ b. Adding paragraph (g)(1)(iv); and

■ c. Revising paragraphs (i) and (j).

The revisions and addition read as follows:

§ 3560.102 Housing project management.

* * * * *

(b) *Management plan.* Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements. The management plan should describe whether administrative expenses are to be paid from management agent fees or project operations, including a task list of charges covered by the fee as outlined in § 3560.102(i)(3)(i)(A). The management plan must meet the standards set out in this rule.

* * * * *

(g) * * *

(1) * * *

(iv) Any borrower's entity control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.

* * * * *

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity for the following costs and services:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and workers' compensation reports, and other IRS- or state-required reports.

(iv) In-house training provided to on-site staff by the management company.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency.

(vi) Preparation and distribution of the Agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of utility allowance analysis.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and overage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, to include consultation and support to site-staff, the Agency and with the borrowers.

(C) Postage expenses unrelated to site operation.

(D) Expense of telephone and facsimile communication, unrelated to site operations.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the borrower. Insurance coverage for agent's office and operations (Property, Auto, Liability, E&O, Casualty, Workers Compensation, etc.)

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(I) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans, agreements, and management certifications.

(xvi) Directing the investment of project funds into required accounts.

(xvii) Maintenance of bank accounts and monthly reconciliations.

(xviii) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xix) Account maintenance, settlement, and disbursement of security deposits.

(xx) Working with auditors for initial Agency annual financial reports.

(xxi) Storage of records, to include electronic records, and adherence to records retention requirements.

(xxii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiii) Oversight of general and preventive maintenance procedures and policies.

(xxiv) Development and oversight of asset replacement plans.

(xxv) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(2) Management fees may consist of a base per occupied revenue producing unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Identifying the Type of Administrative Expense. Management Plans and Agreements must describe if administrative expenses are to be paid from the management fee or paid for as a project cost.

(i) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(ii) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(j) *Management certification.* (1) As a condition of approval of project management, including borrowers who self-manage, borrower and management agents must execute an Agency-approved certification certifying that:

(i) Borrowers and management agent agree to operate the housing project in accordance with the management plan;

(ii) Borrowers and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) Borrowers and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) Management agreement between the borrower and management agent complies with the requirements of this section;

(v) Allowable management fees are assessed and paid out of the housing projects' general operating account. Borrowers and management agents will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time new management is proposed and/or a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

* * * * *

■ 7. Amend § 3560.104 by revising paragraph (b)(1) to read as follows:

§ 3560.104 Fair housing.

* * * * *

(b) * * *

(1) Borrowers with housing projects that have five or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

* * * * *

■ 8. Amend § 3560.105 by revising paragraphs (c)(4) and (f)(10) to read as follows:

§ 3560.105 Insurance and taxes.

* * * * *

(c) * * *

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

* * * * *

(f) * * *

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance or mine subsidence insurance) must be accounted for in the replacement reserve account, unless the deductible does not exceed the maximum deductible allowable as

indicated in 3560.105(f)(9)(i). Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

* * * * *

Subpart D—Multi-Family Housing Occupancy

■ 9. Amend § 3560.152 by revising paragraph (c) heading and introductory text, and paragraphs (c)(1) introductory text and (e)(2)(iv) to read as follows:

§ 3560.152 Tenant eligibility.

* * * * *

(c) *Requirements for elderly housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing and congregate housing or group homes:

(1) For elderly housing and congregate housing, the following provisions apply:

* * * * *

(e) * * *

(2) * * *

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c) and lost rental assistance. Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

* * * * *

■ 10. Amend § 3560.154 by revising paragraphs (a)(9) introductory text and (j) to read as follows:

§ 3560.154 Tenant selection.

(a) * * *

(9) Race, ethnicity, and gender designation. The following disclosure notice shall be used:

* * * * *

(j) *Criminal activity.* Borrowers will deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

■ 11. Amend § 3560.156 by:

■ a. Revising paragraph (c)(1);

■ b. Adding paragraph (c)(6)(v); and

■ c. Revising paragraphs (c)(15) and (16).

The revisions and addition read as follows:

§ 3560.156 Lease requirements.

* * * * *

(c) * * *

(1) Leases for tenants who hold a Letter of Priority Entitlement (LOPE) issued according to § 3560.660(c) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

* * * * *

(6) * * *

(v) The Violence Against Women Reauthorization Act of 2013 and any amendments thereto.

* * * * *

(15) Leases, including renewals, must include the following language:

''It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex premises or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a ''drug violation'') may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit.

Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.''

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit within 30-days of written notification that the unit is needed by an eligible qualified person with disabilities who requires the accessibility features of the unit. Additionally, the lease clause must ensure that the household may remain in the rental unit with accessibility features until an appropriately sized vacant unit within the project becomes available and then must move or vacate within 30 days of notification from borrower.

■ 12. Amend § 3560.158 by revising paragraph (d)(3) introductory text to read as follows:

§ 3560.158 Changes in tenant eligibility.

* * * * *

(d) * * *

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-tenant's death, even if the household is over housed according to the housing project's occupancy rules except as follows:

* * * * *

■ 13. Amend § 3560.159 by revising paragraph (c) to read as follows:

§ 3560.159 Termination of occupancy.

* * * * *

(c) *Other terminations.* Should occupancy be terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, and prior to expiration of the disaster declaration, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

* * * * *

Subpart E—Rents

■ 14. Amend § 3560.205 by revising paragraph (e) to read as follows:

§ 3560.205 Rent and utility allowance changes.

* * * * *

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, tenants or members receiving notice of a proposed rent or utility allowance change in accordance with 3560.205(d)(2) shall be notified of the rent or utility allowance change to be effective 30 calendar days from the date of the notification.

* * * * *

■ 15. Amend § 3560.207 by revising paragraph (b) to read as follows:

§ 3560.207 Annual adjustment factors for Section 8 units.

* * * * *

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set basic, note, and HUD contract rents for housing receiving HUD project-based Section 8 assistance, as specified in § 3560.202(c).

* * * * *

Subpart F—Rental Subsidies

■ 16. Amend § 3560.252 by:

■ a. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5) respectively, and adding new paragraph (b)(2); and

■ b. Revising paragraph (c)(2) introductory text.

The addition and revision read as follows:

§ 3560.252 Authorized rental subsidies.

* * * * *

(b) * * *

(2) Agency housing vouchers;

* * * * *

(c) * * *

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if all of the following conditions are met.

* * * * *

■ 17. Amend § 3560.254 by revising paragraph (c) to read as follows:

§ 3560.254 Eligibility for rental assistance.

* * * * *

(c) *Eligible households.* Households eligible for rental assistance are those:

(1) With very low- or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(1) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11;

(4) Who meet the occupancy rules/policies established by the borrower in accordance with § 3560.155(e);

(5) Who have a signed, unexpired tenant certification form on file with the borrower; and

(6) Who is not delinquent on any Federal debt, including unauthorized assistance repayment agreements.

■ 18. Revise § 3560.258 to read as follows:

§ 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will have a term of the later of 12 months from the first disbursement of the obligation or when funds under the agreement are exhausted.

(b) *Replacing expiring obligations.* Rental assistance agreements may be renewed in accordance with § 3560.255(a)(1).

■ 19. Amend § 3560.259 by revising paragraphs (a)(3) and (4) and adding paragraph (d) to read as follows:

§ 3560.259 Transferring rental assistance.

(a) * * *

(3) After a liquidation, prepayment or natural maturity;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period (Section 515) or a 12-month period (Section 514 or 516); or

* * * * *

(d) Agency use of obligation balances. In lieu of transferring rental assistance units, the Agency may elect to utilize the remaining obligation balances of units identified in 3560.259(a)(2) and (3) for renewal purposes.

Subpart G—Financial Management

■ 20. Amend § 3560.302 by revising paragraphs (c)(3)(ii) and (iii) and paragraphs (c)(5)(i), (ii) and (iv) to read as follows:

§ 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

* * * * *

(c) * * *

(3) * * *

(ii) Real estate tax and insurance account (if not part of the general operating account or unless escrowed by the Agency);

(iii) Reserve account (unless escrowed by the Agency in accordance with 3560.65);

* * * * *

(5) * * *

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. Funds exceeding the Federally insured limit under a Tax ID Number must be moved to a different qualified banking institution that will insure the funds unless the current financial institution provides additional surety such as a collateral pledge that may already be in place.

* * * * *

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, are considered assets of the property and must be held in trust by the borrower for the loan obligations until used and serve as security, through transfers or assumptions for the Agency loan or grant until all outstanding balances are satisfied.

* * * * *

■ 21. Revise § 3560.303 to read as follows:

§ 3560.303 Housing project budgets.

(a) *General requirements.* (1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in 7 CFR 3560.103(c) and will assist the Agency on utilization of the reserve account for current or future rent increase requests.

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) *Allowable and unallowable project expenses.* Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) *Allowable expenses.* Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in § 3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

(A) Gross salary;

(B) Employer Federal Insurance Contributions Act (FICA) contribution;

(C) Federal unemployment tax;

(D) State unemployment tax;

(E) Workers compensation insurance;

(F) Health insurance premiums;

(G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive or annual bonuses that are clearly provided for by the site manager salary contract;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns and 401-K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (*e.g.,* heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer.

(C) All bank charges related to the property including purchases of supplies (*e.g.,* checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, social media, radio, cable TV, and telephone books.

(F) Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated.

(G) State taxes and other mandated state or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities.

(I) Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) All bookkeeping supplies and recordkeeping items related to costs of collecting rents on-site.

(M) All office supplies and copies related to costs of preparing and maintaining tenant files and processing tenant certifications to include electronic storage.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax Credit Compliance Monitoring Fees imposed by HFAs.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits, owner-certified submissions in accordance with § 3560.308(a)(2), tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, capital needs assessments (CNA) etc.)

(R) Training for on-site staff provided by outside training vendors. Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(S) Legal fees if found not guilty of civil lawsuits, commercially reasonable legal expenses and costs for defending or settling lawsuits.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to reimburse actual asset management expenses directly

attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors. The cost must be prorated if the policy covers multiple Agency housing properties.

(B) Board of Director review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals. The cost must be prorated if the policy covers multiple Agency housing properties.

(C) Board of Director review and approval of capital expenditures, financial statements, and consideration of any management comments noted. The cost must be prorated if the policy covers multiple Agency housing properties.

(D) Long-term asset management reviews. The cost must be prorated if the policy covers multiple Agency housing properties.

(viii) Agency approved Third Party debt service for the project.

(2) *Unallowable expenses.* Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543(a);

(ii) Purposes unrelated to the housing project;

(iii) Reimbursement of inaccurate or false claims;

(iv) Court ordered settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation. It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (*i.e.,* representing a general partner or limited partner to defend their individual owner interest is not allowable);

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes. Charging for payment of penalties including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers;

(vi) Association dues unless related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project;

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract;

(viii) Billing for parties or gifts to management agent staff;

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office;

(x) Billing the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.,* purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition; or

(xi) Costs of tenant services.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) All accounts payable;

(6) Other authorized expenditures; and

(7) Return on owner investment.

(d) *Determining if expenses are reasonable.* Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(1) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (*i.e.,* referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required, and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(2) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget denial and/or a demand for recovery action.

(e) *Agency review and approval.* (1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a) through (d) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a) through (d) of this section, or if the rent and utility allowance request has been denied in accordance with § 3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above $25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

■ 22. Amend § 3560.306 by:

■ a. Revising paragraphs (a), (b), (d), and (e)(2);

■ b. Redesignating paragraphs (g)(2) through (5) as paragraphs (g)(3) through (6) respectively, and adding new paragraph (g)(2); and

■ c. Redesignating paragraph (j)(2) as paragraph (j)(3) and adding new paragraph (j)(2).

The revisions and additions read as follows:

§ 3560.306 Reserve account.

(a) *Purpose.* To meet the major capital expense needs of a housing project,

borrowers must establish and maintain a reserve account, unless escrowed by the Agency.

(b) *Financial management of the reserve account.* Unless otherwise approved by the Agency, borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

* * * * *

(d) *Transfer of surplus general operating account funds.* (1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables and priorities, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year as defined in paragraph (d)(1), the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) * * *

(2) Reserve accounts must be supervised accounts that require the Agency to approve all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 GRRH program are used for the construction and/or rehabilitation of a direct MFH loan project. Direct MFH loan borrowers, who are exempted from the supervised account requirement, as described in this section, must follow Section 538 GRRH program regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

* * * * *

(g) * * *

(2) Borrowers should include any needed capital improvements based on the needs identified in an Agency approved Capital Needs Assessment (if obtained) are completed within a reasonable timeframe.

* * * * *

(j) * * *

(2) The Agency will allow for an annual adjustment to increase reserve account funding levels by Operating Cost Adjustment Factor (OCAF) as published by HUD annually. This will require a modification to the Loan agreement and the increase documented with budget submission as outlined in § 3560.303.

* * * * *

Subpart I—Servicing

■ 23. Amend § 3560.402 by revising paragraph (b) to read as follows:

§ 3560.402 Loan payment processing.

* * * * *

(b) *Required conversion to PASS.* Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS with any loan servicing action.

* * * * *

Subpart L—Off-Farm Labor Housing

§ 3560.576 [Amended]

■ 24. Amend § 3560.576 by removing the words ''State Director's'' and adding in their place ''MFH Leadership Designee's'' in paragraph (e).

Subpart N—Housing Preservation

§ 3560.656 [Amended]

■ 25. Amend § 3560.656 by removing the word ''will'' and replacing it with ''may'' in paragraph (a) introductory text.

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2020–18192 Filed 9–22–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[EOIR Docket No. 19–0010; A.G. Order No. 4843–2020]

RIN 1125–AA93

Procedures for Asylum and Withholding of Removal

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (''Department'' or ''DOJ'') proposes to amend the Executive Office for Immigration Review (''EOIR'') regulations governing asylum and withholding of removal, including changes to what must be included with an application for such relief for it to be considered complete and the consequences of filing an incomplete application, changes establishing a 15-day filing deadline for aliens applying for asylum in asylum-and-withholding-only proceedings, and changes related to the 180-day asylum adjudication clock.

DATES: Written or electronic comments must be submitted on or before October 23, 2020. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight Eastern Time at the end of that day.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and referencing RIN 1125–AA93 or EOIR Docket No. 19–0010, by one of the two methods below.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of an electronic submission, please direct the mail/shipment to: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AA93 or EOIR Docket No. 19–0010 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied

by an English translation. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule; explain the reason for any recommended change; and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov*. Such information includes personally identifiable information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personally identifiable information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov*.

Personally identifiable information located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*. To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the ''For Further Information Contact'' paragraph above for agency contact information.

II. Discussion

In 1980, Congress enacted the Refugee Act of 1980, which, among other things, amended the Immigration and Nationality Act (''INA'' or ''Act'') to implement the obligations of the United States under the 1967 Protocol Relating to the Status of Refugees (''1967 Protocol''), by establishing a formal statutory procedure for granting asylum to certain refugees who are present in the United States, and by providing for a permanent procedure for the admission and resettlement of refugees. Public Law 96–212, 94 Stat. 102, 102. The term ''refugee'' is now generally defined as ''any person who is outside of any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' INA 101(a)(42), 8 U.S.C. 1101(a)(42). Those five grounds, which mirror those set out in the 1951 Convention Relating to the Status of Refugees, as well as the 1967 Protocol, are the sole grounds for asylum in the United States today.

A. Form I–589 Filing Requirements

1. Filing Deadline for Asylum Applications in Asylum-and-Withholding-Only Proceedings

An applicant for relief or protection from removal, including asylum, must comply with applicable requirements to submit information or documentation in support of the application as provided by statute or regulation. INA 240(c)(4)(B), 8 U.S.C. 1229a(c)(4)(B). With one exception for detained crewmembers of a vessel, *see* 8 CFR 1208.5(b)(1)(ii), the regulations currently do not prescribe a specific deadline for filing an application for asylum and withholding of removal with EOIR.[1] Rather, in immigration proceedings, the immigration judge has the authority to set deadlines for the filing of applications and related documents. 8 CFR 1003.31(c). Where an immigration judge has set a deadline for filing an application for relief and that application is not filed within the time set by the court, the opportunity to file such an application shall be deemed waived. *Id.* The Board of Immigration Appeals has routinely held that applications for benefits are deemed abandoned when the alien fails to timely file them. *See Matter of R–R–,* 20 I&N Dec. 547, 549 (BIA 1992) (asylum application deemed abandoned after alien failed to file application by deadline set by the immigration judge); *Matter of Jean,* 17 I&N Dec. 100, 101–02 (BIA 1979) (asylum application deemed abandoned after alien failed to meet 20-day filing deadline set by immigration judge).

In this notice of proposed rulemaking (''proposed rule''), the Department proposes to revise 8 CFR 1208.4 to add a 15-day deadline from the date of the alien's first hearing to file an application for asylum and withholding of removal for aliens in asylum-and-withholding-only proceedings.[2] Aliens in such proceedings are generally already subject to removal orders, denials of applications for admission, or denials of permission to land in the case of crewmembers, and are often also detained. 8 CFR 1208.2(c).[3] Moreover,

[1] There is a statutory one-year deadline for filing asylum applications, which allows for limited exceptions and exclusions. INA 208(a)(2)(B), (D), (E), 8 U.S.C. 1158(a)(2)(B), (D), (E).

[2] For many years, these proceedings have been referred to as ''asylum-only'' proceedings. *See, e.g., Matter of D–M–C–P–,* 26 I&N Dec. 644, 645 (BIA 2015) (''The applicant expressed a fear of returning to Argentina, and on June 23, 2011, his case was referred to the Immigration Court for asylum-only proceedings. . . .''). EOIR now uses the term ''asylum-and-withholding-only proceedings.'' *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Interview, 85 FR 36264, 36265 n.2 (June 15, 2020).

[3] Most aliens who are applicants for admission are subject to detention during the inspection process and any subsequent expedited removal proceedings. 8 CFR 235.3. Aliens who are ordered removed after entering the United States are subject to detention by the Department of Homeland Security (''DHS''). INA 241(a)(2), 8 U.S.C. 1231(a)(2). The categories of aliens described in 8 CFR 1208.2(c) encompass both categories—*i.e.,* those denied admission to the United States and those who have entered the United States and subsequently become subject to removal through a removal order issued by DHS outside of immigration proceedings conducted by the Department. For aliens in the former category, their asylum claims typically are presented at the time admission is denied. For aliens in the latter category, their asylum claims typically arise after DHS has detained them and begun the process of effectuating their removal. More specifically, alien crewmembers who are subject to denial of permission to land or removal pursuant to INA 252, 8 U.S.C. 1282, are also subject to detention. INA 252(b), 8 U.S.C. 1282(b); 8 CFR 252.1(a). Alien stowaways are subject to removal pursuant to INA 235(a)(2), 8 U.S.C. 1225(a)(2). Alien stowaways who go through the credible fear screening process are detained. INA 235(b)(1)(B)(iii)(IV), 8 U.S.C. 1225(b)(1)(B)(iii)(IV). An applicant for admission under the Visa Waiver Program (''VWP'') who is refused admission may be removed, though such removal does not constitute a removal under the Act. 8 CFR 217.4(a)(1), (3). An alien admitted under the VWP who is found to be deportable is ordered removed. 8 CFR 217.4(b). Aliens who have received S nonimmigrant status under INA 101(a)(15)(S), 8 U.S.C. 1101(a)(15)(S), may be subject to removal. 8 CFR 236.4. Aliens subject to the Guam-Commonwealth of the Northern Mariana Islands VWP are subject to similar procedures regarding refusal of admission and removal as aliens subject to the regular VWP. 8 CFR 212.1(q)(8).

their only avenues for relief or protection are applications for asylum, statutory withholding of removal, and protection under the regulations issued pursuant to legislation implementing U.S. obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (''CAT regulations''), and they would not be in asylum-and-withholding-only proceedings if they had not already claimed a fear of persecution or torture upon being returned to their home countries. 8 CFR 1208.2(c)(3)(i). Claims for asylum and withholding of removal (both statutory, INA 241(b)(3), 8 U.S.C. 1231(b)(3), and under the CAT regulations) are the sole issues to be resolved in the proceeding and are squarely presented at the outset of the proceeding; thus, there is no reason not to expect the alien to be prepared to state his or her claim as quickly as possible. Moreover, delaying filing of the claim risks delaying protection or relief for meritorious claims and increases the likelihood that important evidence, including personal recollections, may degrade or be lost over time. Further, without such a deadline for the asylum application, there is a risk that applicants may simply delay proceedings, resulting in inefficiency in what should otherwise be a streamlined proceeding. Finally, such a deadline is consistent with existing regulations that specify a 10-day deadline for detained crewmembers to file an asylum application, 8 CFR 1208.5(b)(1)(ii), and with the regulatory directive in 8 CFR 1208.5(a) that asylum applications filed by detained aliens are to be given expedited consideration.[4]

To allow for unusual situations in which an alien may need additional time to file the application, notwithstanding the alien's recent assertion of a fear of persecution, the Department also proposes to amend 8 CFR 1208.4 to allow for the extension of the deadline for good cause similar to the extension to the 10-day deadline allowable for alien crewmembers to file an asylum application. *See* 8 CFR 1208.5(b)(1)(ii).

Finally, the regulatory deadline would not preclude an alien from amending or supplementing the application later in the course of proceedings, subject to an immigration judge's discretion consistent with 8 CFR 1208.4(c); rather, the deadline would ensure only that the application is filed in a timely manner consistent with the streamlined and focused nature of asylum-and-withholding-only proceedings.

2. Re-Filing an Incomplete Application With EOIR

A Form I–589, Application for Asylum and for Withholding of Removal, is incomplete if it does not include a response to each question, is unsigned, or lacks required supporting evidence described on the form and form instructions. 8 CFR 1208.3(c)(3). An incomplete application does not start the accrual of time for an asylum applicant to file for employment authorization. *Id.* As currently drafted, however, the regulations provide that if the immigration court[5] fails to return an I–589 application submitted by mail within 30 days, the application will be deemed complete. *Id.* The regulations do not provide a time frame in which an alien must re-file the application if the alien wishes it to be considered. *Id.* Upon an alien's request and as a matter of discretion, an immigration judge may allow an alien to amend or supplement the alien's application after it is filed. 8 CFR 1208.4(c).

The proposed rule would revise 8 CFR 1208.3(c)(3) to ensure that cases of individuals seeking asylum are processed efficiently by minimizing any delay between the return of an incomplete asylum application and the re-filing of a complete one. First, the proposed rule would remove the current provision that an alien's incomplete asylum application submitted by mail will be deemed complete if the immigration court fails to return the application within 30 days of receipt. Instead, the proposed rule would provide that immigration courts will reject all incomplete applications and return them to the applicant in a timely fashion to the address of record for the alien or any representative of record.[6] Further, the proposed rule would add a maximum of 30 days for the alien to correct any deficiencies in his or her application; the regulations do not currently have any time requirement for the alien to correct an incomplete application. If the alien fails to file a complete application within the required time period, absent exceptional circumstances, the application would be deemed abandoned and would be denied.

Thirty days is a reasonable period in which to remedy application defects, and the Department expects that applicants would have an incentive to re-file the application as soon as possible in order to trigger the possibility of obtaining employment authorization. It is well established that immigration judges have the authority to set filing deadlines and manage their dockets consistent with applicable law, and this requirement is fully consistent with that authority. *See* 8 CFR 1003.10(b), 1003.14(b), 1003.18, 1003.31(c). Further, if an application is not filed within the time set by an immigration judge, the opportunity to file that application shall be deemed waived. 8 CFR 1003.31(c). Additionally, reasonable filing deadlines do not violate the immigration laws or any international treaty obligations. *See, e.g., Hui Zheng* v. *Holder,* 562 F.3d 647, 655–56 (4th Cir. 2009); *Chen* v. *Mukasey,* 524 F.3d 1028, 1033 (9th Cir. 2008); *Foroglou* v. *Reno,* 241 F.3d 111, 113 (1st Cir. 2001).

Without such a deadline, there is a risk that applicants will delay proceedings based on an assertion that a corrected application will be forthcoming, resulting in wasted immigration judge time and increasing the likelihood that, due to the ongoing addition of cases to the docket, the eventual application may not be adjudicated within 180 days as contemplated by the Act. INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii). These changes will enhance efficiencies for the immigration courts by ensuring that cases proceed in a timely and predictable manner rather than allowing deficiencies in applications to be corrected at any point, and are fully consistent with the Attorney General's authority to set conditions or limitations on the consideration of asylum applications. INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). Moreover, administrative agencies have the prerogative to determine proper rules of procedure that best allow them to carry out their missions. *Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 543 (1978).

3. Submission of Any Applicable Asylum Fee

The Department also proposes to amend 8 CFR 1208.3(c)(3) to specify that

[4] To ensure this deadline is met, the proposed rule also extends the requirements of 8 CFR 1240.11(c)(1)(i) through (iii), regarding advisals given by an immigration judge and the provision of an asylum application to aliens in certain circumstances in removal proceedings, to aliens in proceedings under 8 CFR 1208.2(c)(1) and 1208.4(b)(3)(iii).

[5] As currently written, 8 CFR 1208.3(c)(3) uses the term ''Service'' instead of ''immigration court.'' Use of the term ''Service'' reflects that the Department did not update certain terms and positions when EOIR's regulations were copied from chapter I to new chapter V of title 8 of the Code of Federal Regulations following the creation of DHS in 2003. Other references in chapter V to the Immigration and Naturalization Service or DHS offices apply equally to immigration judges or EOIR.

[6] Aliens are required to maintain an updated address with the immigration court. Form EOIR–33 must be filed with the immigration court within five days of a change in address. 8 CFR 1003.15(d)(2).

any required filing fee must be submitted in connection with the asylum application at the time of filing. *See* 8 CFR 1003.24, 1003.31(b), 1103.7(a)(3) (describing process for payment of fees relating to EOIR proceedings). A Department regulation, 8 CFR 1103.7(b)(4)(ii), provides that when EOIR uses a Department of Homeland Security (''DHS'') form in immigration proceedings, the applicable fee is the one provided under DHS regulations at 8 CFR 103.7.[7] EOIR uses the U.S. Citizenship and Immigration Services (''USCIS'') Form I–589, Application for Asylum and for Withholding of Removal, for which DHS sets the application fee. Under the Department's regulation, the DHS fee would also apply to any filing of USCIS Form I–589 in EOIR proceedings. *See* 8 CFR 1103.7(b)(4)(ii); *see also* 8 CFR 103.7. Thus, the proposed rule would provide that a fee must be submitted if DHS requires one.[8]

B. Form I–589 Procedural Requirements

1. Supplementing the Record

Under 8 CFR 1208.12, an immigration judge [9] may rely on material provided by certain entities when deciding an asylum application, or deciding whether an alien has a credible fear of persecution or torture pursuant to 8 CFR 1208.30 or a reasonable fear of persecution or torture pursuant to 8 CFR 1208.31. Currently, those entities are the Department of State, the DOJ Office of International Affairs, DHS, and other credible sources, which, under the regulation, may include international organizations, private voluntary agencies, news organizations, or academic institutions.

The Department proposes to clarify the external materials upon which an immigration judge may rely, including by broadening the scope of Department components and other government agencies that may possess relevant information for an immigration judge in adjudicating a claim. The Department also proposes to revise the standard for an immigration judge's consideration of information from non-governmental sources to ensure that only probative and credible evidence is considered. Although materials provided by non-governmental organizations are sometimes helpful, the current regulatory text could be read to imply that they always are, which is not necessarily the case. *See, e.g., M.A.* v. *U.S. INS,* 899 F.2d 304, 313 (4th Cir. 1990) (en banc) (''A standard of asylum eligibility based solely on pronouncements of private organizations or the news media is problematic almost to the point of being non-justiciable.''). The proposed revision provides appropriate guidance regarding the use of such materials to ensure that only credible and probative materials are considered.

The Department also proposes to expand 8 CFR 1208.12 to allow an immigration judge to submit evidence into the record and consider that evidence, so long as the judge has provided a copy to both parties, which will give the parties an opportunity to respond to or address the information appropriately. This proposal is consistent with the immigration judge's powers and duties under 8 CFR 1003.10(b) to manage immigration court hearings: ''In deciding the individual cases before them, . . . immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.'' *See also* 8 CFR 1003.36 (''The Immigration Court shall create and control the Record of Proceeding.''). It is also consistent with an immigration judge's duty to develop the record. *See, e.g., Yang* v. *McElroy,* 277 F.3d 158, 162 (2d Cir. 2002) (per curiam) (''[T]he IJ whose decision the Board reviews, unlike an Article III judge, is not merely the fact finder and adjudicator but also has an obligation to establish the record.''); *Constanza-Martinez* v. *Holder,* 739 F.3d 1100, 1102–03 (8th Cir. 2014) (concluding that the immigration judge's introduction of documents into the record did not deprive the respondent of due process because ''IJs maintain an affirmative duty to develop the record''); *see also Richardson* v. *Perales,* 402 U.S. 389, 410 (1971) (finding that an administrative law judge ''acts as an examiner charged with developing the facts''); Charles H. Koch, Jr., Administrative Law and Practice § 5.25 (2d ed. 1997) (noting that ''[t]he presiding official is pivotal to the fact-finding function of an evidentiary hearing and hence, unlike the trial judge, an administrative judge has a well-established affirmative duty to develop the record''). Further, this change will better enable immigration judges to ensure full consideration of all relevant evidence and full development of the record for cases involving a pro se respondent. *See Matter of S–M–J–,* 21 I&N Dec. 722, 729 (BIA 1997) (en banc) (noting that ''various guidelines for asylum adjudicators recommend the introduction of evidence by the adjudicator'').

2. The Asylum Adjudication Clock

The proposed rule would remove and reserve 8 CFR 1208.7 as EOIR does not adjudicate applications for employment authorization.[10] Further, there is confusing language in 8 CFR 1208.7 regarding the relationship between the time period for applications for employment authorization, which EOIR does not adjudicate, and the time period for adjudicating actual asylum applications, which are relevant for EOIR's purposes.

The INA contains two separate provisions relating to a 180-day time frame in the context of an asylum application. The first, INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), directs the Attorney General to set procedures for processing asylum applications providing that, in the absence of exceptional

[7] On November 14, 2019, DHS proposed to adjust its fee schedule for certain applications it adjudicates, including applications also adjudicated by EOIR—*e.g.,* Forms I–191, I–485, I–601, I–589, and I–881. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 FR 62280, 62326–27 (Nov. 14, 2019). As part of that proposed rulemaking, DHS proposed to move its fee schedule from 8 CFR 103.7 to 8 CFR 106.2. *See* 84 FR at 62359–63. On August 3, 2020, DHS published the final rule regarding its new fee schedule to be effective October 2, 2020. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (Aug. 3, 2020). The Department will conform its reference in 8 CFR 1103.7(b)(4)(ii) to DHS's new fee regulation in a separate rulemaking.

[8] DHS's recent final rule will require a fee of $50 for Form I–589 in most circumstances. 85 FR at 46791. All fees for DHS applications adjudicated by the Department are payable to DHS, and DHS deposits the funds in the Immigration Examinations Fee Account. *See* INA 286, 8 U.S.C. 1356.

[9] The current text of 8 CFR 1208.12 refers to an asylum officer instead of an immigration judge. This reflects that the Department did not update certain terms and positions when EOIR's regulations were copied from chapter I to new chapter V of title 8 of the Code of Federal Regulations following the creation of DHS in 2003. The proposed regulation corrects that oversight and replaces ''asylum officer'' with ''immigration judge'' in 8 CFR 1208.12.

[10] On June 22, 2020, DHS issued a final rule, effective August 21, 2020, in which it removed from its regulations in part 208 of title 8 (1) the 30-day processing provision for initial employment authorization applications for those with pending asylum applications, and (2) the 90-day time frame for receipt of an application to renew employment authorization. Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications, 85 FR 37502, 37503. The rule also indicated that DOJ may issue conforming changes to 8 CFR 1208.7 at a later date. *Id.* at 37510. By removing 8 CFR 1208.7, which mirrors 8 CFR 208.7, the proposed rule would avoid any potential conflict with DHS regulatory provisions. On June 26, 2020, DHS published a final rule, effective August 25, 2020, making changes to 8 CFR 208.7. *See* Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532. The removal of 8 CFR 1208.7 avoids any potential conflict with changes to 8 CFR 208.7.

circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed. Implementing regulations clarify that the ''time period[] within which . . . the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with'' applicable procedures. 8 CFR 1208.7(a)(2).

The second, INA 208(d)(2), 8 U.S.C. 1158(d)(2), addresses when an asylum applicant may be granted employment authorization based on an asylum application, providing that an applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

EOIR's current regulations provide that (1) an alien cannot apply for employment authorization until at least 150 days after filing an application for asylum, and (2) ''no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application.'' 8 CFR 1208.7(a)(1). Furthermore, the time periods within which the alien may not apply for employment authorization ''shall begin when the alien has filed a complete asylum application in accordance with'' applicable regulations. 8 CFR 1208.7(a)(2).[11]

Although neither provision is privately enforceable, INA 208(d)(7), 8 U.S.C. 1158(d)(7), both statutory provisions express Congress's strong expectation that asylum applications would be adjudicated within 180 days of the date of filing. Section 208(d)(5)(A)(iii) of the Act, 8 U.S.C. 1158(d)(5)(A)(iii), does so expressly, by indicating that asylum applications should be adjudicated within 180 days absent ''exceptional circumstances.'' And INA 208(d)(2), 8 U.S.C. 1158(d)(2), does so implicitly, by providing that employment authorization shall not be granted prior to 180 days after an alien files an asylum application, *i.e.,* after the claim is supposed to have been adjudicated.

Although both of these provisions reflect an expectation that asylum applications should be adjudicated within 180 days of filing, the provisions themselves are not identical. For example, the adjudication deadline for the asylum application itself is subject to tolling for ''exceptional circumstances.'' INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii). In contrast, the period during which an alien is barred from filing an application for employment authorization based on an asylum application may be tolled solely for an alien-caused continuance, 8 CFR 1208.7(a)(1), and continuances are subject to a ''good cause'' standard, *see* 8 CFR 1003.29 and 1240.6.[12]

Aliens in removal proceedings sometimes request continuances pursuant to 8 CFR 1003.29 that, if granted, would delay adjudication of their asylum applications past the 180-day deadline. Section 1003.29 imposes a ''good cause'' standard for granting continuances. But if granting a continuance would result in missing the 180-day deadline, the immigration judge may only grant the continuance if the respondent satisfies both the ''good cause'' standard of 8 CFR 1003.29 and also shows the ''exceptional circumstances'' required by INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii). Under 8 CFR 1208.7(a)(2), ''[a]ny delay requested or caused by the applicant shall not be counted as part of'' the 180-day adjudication deadline described in INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii). This means that an alien who causes delays in the adjudication process is not entitled to such a prompt adjudication of his asylum claim. But, absent delays that qualify as exceptional circumstances, 8 CFR 1208.7(a)(2) does not relieve immigration judges of their obligation to adjudicate asylum claims within 180 days.

Neither existing regulations nor EOIR's operational guidance, however, has always clearly and carefully distinguished between INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), and INA 208(d)(2), 8 U.S.C. 1158(d)(2). *See* Policy Memorandum 19–05, Guidance Regarding the Adjudication of Asylum Applications Consistent with INA section 208(d)(5)(A)(iii) (Nov. 19, 2018). Consequently, the proposed rule remedies that confusion by removing regulatory language related to the employment authorization process that EOIR does not administer and by amending part 1003 of EOIR's regulations to implement INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), and to direct immigration judges to adjudicate asylum applications within 180 days of filing absent exceptional circumstances.

Although the term ''exceptional circumstances'' is not defined for purposes of INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii),[13] there is no indication that Congress intended for that standard to be satisfied by any request for delay by the applicant or to be linked to the employment authorization process. To the contrary, EOIR's adjudication of asylum applications is a wholly separate process from DHS's adjudication of employment authorization applications. Indeed, there is no apparent basis to include the reference to INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), in 8 CFR 1208.7 because that regulation otherwise addresses employment authorization, which is unrelated to INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii).[14]

To better effectuate the ''exceptional circumstances'' exception to the 180-day deadline in INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), the Department proposes to add a definition of exceptional circumstances in the context of asylum adjudications that is similar to the one currently in INA 240(e)(1), 8 U.S.C. 1229a(e)(1). The statutory definition in INA 240(e)(1), 8 U.S.C. 1229a(e)(1), characterizes circumstances in which an order of removal issued in absentia may be rescinded for an alien who had notice of the hearing at which the alien failed to appear, provided the alien filed a motion to reopen and rescind the order within 180 days. INA 240(b)(5)(C)(i), 8 U.S.C. 1229a(b)(5)(C)(i). As a definition of circumstances in which an adjudication should have been delayed, it also represents a helpful explanation of the exceptional nature of circumstances that would warrant an exception to the 180-day deadline.

As of August 14, 2020, EOIR has over 560,000 applications for asylum and withholding of removal pending, and its

[11] DHS regulations with similar provisions have been amended, *see* note 10, *supra,* and this proposed rule would eliminate these provisions altogether from EOIR's regulations as discussed below.

[12] The ''good cause'' standard governs continuances under 8 CFR 1003.29 and adjournments under 8 CFR 1240.6, and both provisions were derived from former 8 CFR 242.13 (1958). *Matter of L–A–B–R–,* 27 I&N Dec. 405, 407 n.1 (A.G. 2018). For simplicity, the proposed rule generally refers only to 8 CFR 1003.29.

[13] The term ''exceptional circumstances'' is defined in INA 240(e)(1), 8 U.S.C. 1229a(e)(1), but only for purposes of INA 240 and 240A, 8 U.S.C. 1229a and 1229b.

[14] The reference to INA 208(d)(5)(A)(iii) was inserted into 8 CFR 208.7 (which was later copied in 8 CFR 1208.7) without explanation. *See* 62 FR 444, 464 (Jan. 3, 1997).

ability to ensure they are adjudicated consistent with the statutory requirements of INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), may be undermined by the current text of 8 CFR 1208.7(a)(2), which could be interpreted to allow either party to unilaterally delay the adjudication of an asylum application without necessarily showing exceptional circumstances, in contravention of the statute. Nothing in the text of INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), which is directed toward adjudicators rather than applicants, indicates that an asylum applicant may unilaterally prompt an extension of the adjudication deadline in the absence of exceptional circumstances.

An applicant may have his or her removal proceeding continued upon a showing of good cause. 8 CFR 1003.29, 1240.6; *Matter of L–A–B–R–,* 27 I&N Dec. 405 (A.G. 2018). Although neither ''good cause'' nor ''exceptional circumstances'' is defined by statute or regulation in this context, there is no indication that the two terms were intended to mean the same thing. To the contrary, plain meaning would dictate that the two terms reflect different standards. Indeed, in other contexts, ''good cause'' is generally treated as a lower standard than ''exceptional circumstances.'' *Compare United States* v. *Lea,* 360 F.3d 401, 403 (2d Cir. 2004) (''Exceptional circumstances [under a criminal detention statute] exist where there is a unique combination of circumstances giving rise to situations that are out of the ordinary.'' (internal quotation marks omitted)), *with Hall* v. *Sec'y of Health, Educ. & Welfare,* 602 F.2d 1372, 1377 (9th Cir. 1979) (''Good cause is . . . not a difficult standard to meet.'').

In short, ''exceptional circumstances'' are circumstances that are ''clearly out of the ordinary, uncommon, or rare.'' *United States* v. *Larue,* 478 F.3d 924, 926 (8th Cir. 2007) (per curiam) (applying ''exceptional reasons'' standard); *see also* INA 240(e)(1), 8 U.S.C. 1229a(e)(1) (exceptional circumstances include ''battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances''). The term ''good cause'' has no settled meaning and generally requires a balancing of relevant factors to determine whether it exists. *Matter of L–A–B–R–,* 27 I&N Dec. at 412–13. Thus, although an exceptional circumstance will support a finding of good cause, good cause itself is not necessarily an exceptional circumstance that would warrant an exception to the statutory 180-day adjudication deadline for an asylum application. The inclusion of the reference to INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), in 8 CFR 1208.7, which could be understood to effectively allow an alien or DHS to delay the adjudication deadline pursuant only to the ''good cause'' standard in 8 CFR 1003.29 and 1240.6, is in tension with the statute. Thus, not only does 8 CFR 1208.7 warrant deletion, but modifications to 8 CFR 1003.29 and 1240.6 are also necessary. Moreover, removing the reference to INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), as part of the removal of all of 1208.7 will allow EOIR to ensure that the statutory mandate regarding adjudicating asylum applications within 180 days is fulfilled absent exceptional circumstances.

In order to further ensure that asylum adjudications are completed within the 180-day period prescribed by INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), the proposed rule would directly promulgate a clear regulation implementing INA 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii), in 8 CFR 1003.10(b) as part of the listing of immigration judge powers and duties. It would also amend 8 CFR 1003.31(c), which outlines the immigration judge's authority to set and extend time limits for filings of applications and related documents, to ensure that the setting of deadlines for filing supporting documents does not inadvertently extend the 180-day deadline absent exceptional circumstances. In short, the changes would incorporate the 180-day timeline by limiting an immigration judge's ability to set filing deadlines that would cause the adjudication of an asylum application to exceed 180 days absent a showing of exceptional circumstances.

Finally, the proposed rule would also remove and reserve § 1208.9 because that provision refers to operations performed by asylum officers in DHS, not immigration judges in EOIR. That provision was duplicated from § 208.9 as part of the reorganization of title 8 following the transfer of functions from the former Immigration and Naturalization Service to DHS due to the Homeland Security Act of 2002, Public Law 107–296. Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824, 9834 (Feb. 28, 2003).

III. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this proposed regulation in accordance with the Regulatory Flexibility Act and has determined that it will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed rule would not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum, and only individuals are placed in immigration proceedings.

B. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

This proposed rule would not be a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 and Executive Order 13563

The Office of Information and Regulatory Affairs of the Office of Management and Budget (''OMB'') has determined that this proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the regulation has been submitted to OMB for review. The Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Department believes that this proposed rule would effectuate congressional intent to resolve cases in an expeditious manner and would provide significant net benefits relating to EOIR proceedings by allowing the agency to resolve cases more quickly. *See* Executive Order 12866, sec. (1)(b)(6) (stating that ''[e]ach agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs''). As of August 14, 2020, EOIR has over 560,000 pending cases with an application for asylum and withholding of removal, and the median processing time for a non-detained case with an asylum application is 807 days. This proposed rule would assist EOIR in adjudicating new asylum cases more efficiently in order to ensure that this volume does not increase to an insurmountable degree. No costs to the Department or to respondents are expected. Respondents are already required to submit complete asylum applications in order to have them adjudicated, and immigration judges already have authority to set deadlines.

The Department notes that this proposed rule would not impose any new fees. Consistent with the treatment of other applications referred by USCIS that are renewed in immigration proceedings, an alien filing a USCIS Form I–589 with USCIS who is then referred to DOJ for immigration proceedings would pay the application fee only once. The Department's fees for applications published by DHS are established in accordance with 8 CFR 1103.7(b)(4)(ii), which, in turn, cross-references the DHS fee schedule. Given the inextricable nature of the two agencies' asylum processes and the benefit of not treating applicants for substantially similar benefits differently if they file with DOJ or with DHS, the Department's regulations have contained this cross-reference for several years, and this proposed rule would not alter it. The Department is also not authorized, per regulation, to waive the application fee for an application published by DHS if DHS identifies that fee as non-waivable. 8 CFR 1103.7(c). The proposed rule would also not alter that regulatory structure.

The Department believes that this proposed rule would impose only minimal direct costs on the public, to include the costs associated with attorneys and regulated entities familiarizing themselves with this rule. An immigration judge's ability to set filing deadlines is already established by regulation, and filing deadlines for both applications and supporting documents are already a well-established aspect of immigration court proceedings guided by regulations and the Immigration Court Practice Manual. The proposed rule also does not require an immigration judge to schedule a merits hearing at any particular time after the application is filed, as long as the application is adjudicated within 180 days absent exceptional circumstances, which is an existing and longstanding statutory requirement. Moreover, this rule does not require that an alien wait until the immigration judge sets a filing deadline before filing an application, and an alien remains free to file his or her asylum application with the immigration court before the first hearing. Asylum applications are frequently filed prior to or at an initial immigration court hearing already, and existing regulations allow for supplementing an initial application as appropriate, subject to an immigration judge's discretion. Most aliens filing asylum applications in pending immigration proceedings—87 percent—have representation,[15] and the proposed rule would not be expected to increase any burdens on practitioners, who are already subject to professional responsibility rules regarding workload management, 8 CFR 1003.102(q)(1), and who are already accustomed to preparing and filing documents related to asylum claims according to deadlines established by an immigration judge. The Department acknowledges that establishing a fixed deadline to file an asylum application in some types of immigration proceedings may alter the manner in which attorneys organize their caseloads, though it also recognizes that attorneys have been aware of the 180-day adjudication deadline for asylum applications for over two decades and may be familiar with the similar existing deadline for alien crewmember asylum applications in 8 CFR 1208.5(b)(1)(ii). The Department seeks comment on the proposed rule's potential indirect costs and benefits to practitioners, if any, beyond those already inherent in immigration proceedings and existing law.

No costs to the Department are associated with the proposed regulatory changes. The changes do not create an incentive that would cause DHS to file more cases and, thus, are not expected to result in an increase in the number of cases to be adjudicated by EOIR. Further, the changes provide guidance for administrative decision-making but do not require immigration judges to make more decisions or to prolong immigration proceedings.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This proposed rule may require edits to the USCIS Form I–589, Application for Asylum and for Withholding of Removal, because the filing of an asylum application may now require submission of a fee receipt. If necessary, a separate notice will be published in the **Federal Register** requesting comments on the information collection impacts of this rule and the revised USCIS Form I–589.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, 8 CFR parts 1003, 1208, and 1240 are proposed to be amended as follows:

[15] EOIR, Current Representation Rates, available at *https://www.justice.gov/eoir/page/file/1062991/download.*

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. In § 1003.10, amend paragraph (b) by adding three sentences at the end of paragraph to read as follows:

§ 1003.10 Immigration judges.

* * * * *

(b) * * * In the absence of exceptional circumstances, an immigration judge shall complete administrative adjudication of an asylum application within 180 days after the date an application is filed. For purposes of this paragraph (b) and of §§ 1003.29 and 1240.6 of this chapter, the term *exceptional circumstances* refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the parties or the immigration court. A finding of good cause does not necessarily mean that an exceptional circumstance has also been established.

* * * * *

■ 3. Revise § 1003.29 to read as follows:

§ 1003.29 Continuances.

The immigration judge may grant a motion for continuance for good cause shown, provided that nothing in this section shall authorize a continuance that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(A)(iii) of the Act and § 1003.10(b).

■ 4. In § 1003.31, revise paragraph (c) to read as follows:

§ 1003.31 Filing documents and applications.

* * * * *

(c) Subject to § 1208.4(d) of this chapter, the immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any, provided that nothing in this section shall authorize setting or extending time limits for the filing of documents after an asylum application has been filed that would cause the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(A)(iii) of the Act and § 1003.10(b). If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 5. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; Pub. L. 115–218.

■ 6. In § 1208.3, revise paragraph (c)(3) to read as follows:

§ 1208.3 Form of application.

* * * * *

(c) * * *

(3) An asylum application must be properly filed in accordance with the form instructions and with §§ 1003.24, 1003.31(b), and 1103.7(a)(3) of this chapter, including payment of a fee, if any, as explained in the instructions to the application. For purposes of filing with an immigration court, an asylum application is incomplete if it does not include a response to each of the required questions contained in the form, is unsigned, is unaccompanied by the required materials specified in paragraph (a) of this section, is not completed and submitted in accordance with the form instructions, or is unaccompanied by any required fee receipt. The filing of an incomplete application shall not commence the period after which the applicant may file an application for employment authorization. An application that is incomplete shall be rejected by the immigration court. If an applicant wishes to have his or her application for asylum considered, he or she shall correct the deficiencies in the incomplete application and re-file it within 30 days of rejection. Failure to correct the deficiencies in an incomplete application or failure to timely re-file the application with the deficiencies corrected, absent exceptional circumstances as defined in § 1003.10(b), shall result in a finding that the alien has abandoned that application and waived the opportunity to file such an application.

* * * * *

■ 7. In § 1208.4, add paragraph (d) to read as follows:

§ 1208.4 Filing the application.

* * * * *

(d) *Filing deadline.* For any alien in asylum proceedings pursuant to § 1208.2(c)(1) and paragraph (b)(3)(iii) of this section, the immigration judge shall comply with the requirements of § 1240.11(c)(1)(i) through (iii) and shall set a deadline of fifteen days from the date of the alien's first hearing before an immigration judge by which the alien must file an asylum application, which includes an application for withholding of removal and protection under the Convention Against Torture. The immigration judge may extend the deadline for good cause. If the alien does not file an asylum application by the deadline set by the immigration judge, the immigration judge shall deem the opportunity to file such an application waived, and the case shall be returned to the Department of Homeland Security for execution of an order of removal.

§ 1208.7 [Removed and Reserved]

■ 8. Remove and reserve § 1208.7.

§ 1208.9 [Removed and Reserved]

■ 9. Remove and reserve § 1208.9.

■ 10. In § 1208.12, revise paragraph (a) to read as follows:

§ 1208.12 Reliance on information compiled by other sources.

(a) In deciding an asylum application, which includes an application for withholding of removal and protection under the Convention Against Torture, or in deciding whether the alien has a credible fear of persecution or torture pursuant to § 1208.30, or a reasonable fear of persecution or torture pursuant to § 1208.31, an immigration judge may rely on material provided by the Department of State, other Department of Justice offices, the Department of Homeland Security, or other U.S. government agencies, and may rely on foreign government and non-governmental sources if those sources are determined by the judge to be credible and probative. On his or her own authority, an immigration judge may submit relevant evidence into the record, if it is credible and probative, and may consider it in deciding an asylum application, which includes an application for withholding of removal and protection under the Convention Against Torture, provided that a copy of the evidence has been provided to both parties and both parties have had an opportunity to comment on or object to

the evidence prior to the issuance of the immigration judge's decision.

* * * * *

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 11. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec, 902, Pub. L. 105–277 (112 Stat. 2681).

■ 12. Revise § 1240.6 to read as follows:

§ 1240.6 Postponement and adjournment of hearing.

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Department of Homeland Security, provided that nothing in this section shall authorize an adjournment that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(A)(iii) of the Act and § 1003.10(b) of this chapter.

Dated: September 16, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–21027 Filed 9–21–20; 4:15 pm]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0810; Airspace Docket No. 19–ANM–101]

RIN 2120–AA66

Proposed Amendment of Class D and E airspace; Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace at Helena Regional Airport. This action also proposes to modify Class E airspace, designated as a surface area. Additionally, this action proposes to establish Class E airspace, designated as an extension to a Class D or Class E surface area. Further, this action proposes to modify Class E airspace, extending upward from 700 feet above the surface. Also, this action proposes to modify the Class E airspace extending upward from 1,200 feet above the surface. This action also proposes to remove the Helena VORTAC from the airspace legal descriptions. Lastly, this action proposes administrative corrections to the airspaces' legal descriptions. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0810; Airspace Docket No. 19–ANM–101, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would modify the Class D and Class E airspace at Helena Regional Airport, Helena, MT, to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0810; Airspace Docket No. 19–ANM–101''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center,

Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations Part 71 by modifying the Class D airspace at Helena Regional Airport, Helena, MT. The proposal would modify the Class D airspace extensions east and west of the airport to properly contain IFR departures to 700 feet above the surface. The airspace area would be described as follows: That airspace extending upward from the surface to and including 6,400 feet within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

This action also proposes to modify Class E airspace, designated as a surface area, to be coincident with the new Class D dimensions. The airspace area would be described as follows: That airspace extending upward from the surface within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, this action proposes to establish Class E airspace, designated as an extension to a Class D or Class E surface area. The proposed area is designed to contain IFR aircraft descending below 1,000 feet above the surface. This airspace area would be described as follows: That airspace extending upward from the surface within an area bounded by a line beginning at lat. 46°34′18.57″ N, long. 111°51′30.319″ W, to lat. 46°38′5.89″ N, long. 111°51′24.53″ W, to lat. 46°37′12.53″ N, long. 111°45′24.67″ W, to lat. 46°32′22.72″ N, long. 111°46′31.44″ W, to lat. 46°33′24.13″ N, long. 111°54′20.01″ W, then counter-clockwise along the 4.4-mile radius of the airport to lat. 46°34′20.01″ N, long. 111°53′22.03″ W, then to the point of beginning, and within an area bounded by a line beginning at lat. 46°38′39.95″ N, long. 112°06′47.50″ W, to lat. 46°36′47.49″ N, long. 112°07′53.41″ W, to lat. 46°37′22.52″ N, long. 112°11′37.80″ W, to lat. 46°39′19.40″ N, long. 112°10′58.64″ W, then to the point of beginning west of Helena Regional Airport.

Further, this action proposes to modify Class E airspace extending upward from 700 feet above the surface. The action proposes to properly size the airspace to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of the airport, and within 1 mile each side of the 103° bearing from the airport, extending from the 8.3-mile radius to 10.7 miles east of the airport, and within 1.8 miles each side of the 281° bearing from the airport, extending from the 8.3-mile radius to 18.1 miles west of Helena Regional Airport.

This action also proposes to modify Class E airspace extending upward from 1,200 feet above the surface to properly contain IFR aircraft transitioning to/from the terminal and en route environments. This airspace area would be described as follows: That airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Helena Regional Airport.

The action proposes to update the airport's geographic coordinates to match the FAA database. The coordinates should read lat. 46°36′24″ N, long. 111°59′0.0″ W. This action also proposes to remove the Helena VORTAC and all references to the VORTAC from the Class D, E2, and E5 legal descriptions. The navigational aid is not needed to define the airspace. Removal of the navigational aid allows the airspace to be defined from a single reference point which simplifies how the airspace is described. Additionally, the term ''Airport/Facility Directory'' in the last sentence of the Class D and Class E2 airspace legal descriptions is outdated and should be changed to ''Chart Supplement''.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM MT D Helena, MT [Amended]

Helena Regional Airport, MT
(Lat. 46°36′24″ N, long. 111°59′0.0″ W)

That airspace extending upward from the surface to and including 6,400 feet within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ANM MT E2 Helena, MT [Amended]

Helena Regional Airport, MT
(Lat. 46°36′24″ N, long. 111°59′0.0″ W)

That airspace extending upward from the surface within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004. Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ANM MT E4 Helena, MT [New]

Helena Regional Airport, MT
(Lat. 46°36′24″ N, long. 111°59′0.0″ W)

That airspace extending upward from the surface within an area bounded by a line beginning at lat. 46°34′18.57″ N, long. 111°51′30.319″ W, to lat. 46°38′5.89″ N, long. 111°51′24.53″ W, to lat. 46°37′12.53″ N, long. 111°45′24.67″ W, to lat. 46°32′22.72″ N, long. 111°46′31.44″ W, to lat. 46°33′24.13″ N, long. 111°54′20.01″ W, then counter-clockwise along the 4.4-mile radius of the airport to lat. 46°34′20.01″ N, long. 111°53′22.03″ W, then to the point of beginning, and within an area bounded by a line beginning at lat. 46°38′39.95″ N, long. 112°06′47.50″ W, to lat. 46°36′47.49″ N, long. 112°07′53.41″ W, to lat. 46°37′22.52″ N, long. 112°11′37.80″ W, to lat. 46°39′19.40″ N, long. 112°10′58.64″ W, then to the point of beginning west of Helena Regional Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM MT E5 Helena, MT [Amended]

Helena Regional Airport, MT
(Lat. 46°36′24″ N, long. 111°59′0.0″ W)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of the airport, and within 1 mile each side of the 103° bearing from the airport, extending from the 8.3-mile radius to 10.7 miles east of the airport, and within 1.8 miles each side of the 281° bearing from the airport, extending from the 8.3-mile radius to 18.1 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Helena Regional Airport.

Issued in Seattle, Washington, on September 16, 2020.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–20892 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF05

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend the margin requirements for uncleared swaps for swap dealers (''SDs'') and major swap participants (''MSPs'') for which there is no prudential regulator (''CFTC Margin Rule''). In particular, the Commission is proposing to revise the calculation method for determining whether certain entities come within the scope of the initial margin (''IM'') requirements under the CFTC Margin Rule beginning on September 1, 2021, and the timing for compliance with the IM requirements after the end of the phased compliance schedule. The proposed amendment would align certain aspects of the CFTC Margin Rule with the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions' (''BSBS/IOSCO'') Framework for margin requirements for non-centrally cleared derivatives (''BCBS/IOSCO Framework''). The Commission is also proposing to allow SDs and MSPs subject to the CFTC Margin Rule to use the risk-based model calculation of IM of a counterparty that is a CFTC-registered SD or MSP to determine the amount of IM to be collected from the counterparty and to determine whether the IM threshold amount for the exchange of IM has been exceeded such that documentation concerning the collection, posting, and custody of IM would be required.

DATES: With respect to the proposed amendments, comments must be received on or before October 23, 2020.

ADDRESSES: You may submit comments, identified by RIN 3038–AF05, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR Chapter I.

applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov;* Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov;* or Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4s(e) of the Commodity Exchange Act (''CEA'' or ''Act'') [2] requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps [3] that are (i) entered into by an SD or MSP for which there is no prudential regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') [5] and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[6] To offset the greater risk to the SD [7] or MSP [8] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held by the SD or MSP.[9]

Following the mandate under Section 4s(e), the Commission in 2016 promulgated Commission regulations 23.150 through 23.161, namely the CFTC Margin Rule, which requires CSEs to collect and post initial margin (''IM'') [10] and variation margin (''VM'') [11] for uncleared swaps.[12] In implementing the CFTC Margin Rule, the Commission has identified certain issues that it understands would likely impede a smooth transition to compliance for entities required to comply with the IM requirements beginning on September 1, 2021.

A. Calculation Method for Determining Whether Certain Entities Are Subject to the IM Requirements and the Timing for Compliance With the IM Requirements After the End of the Phased Compliance Schedule

Commission regulation 23.161 sets forth a schedule for compliance with the CFTC Margin Rule, spanning from September 1, 2016, to September 1, 2021.[13] Under the schedule, entities are required to comply with the IM requirements in staggered phases,[14] starting with entities with the largest average aggregate notional amounts (''AANA''), calculated on a daily basis, of uncleared swaps and certain other financial products, and then successively with lesser AANA.

The last phase of compliance, which begins on September 1, 2021, encompasses two sets of entities: (i) CSEs and covered counterparties with an AANA between $750 billion and $50 billion (''Phase 5 entities''); [15] and (ii) all other remaining CSEs and covered counterparties,[16] including financial end users (''FEUs'') with material swaps exposure (''MSE'') of more than $8 billion in AANA,[17] (''Phase 6 entities'').[18] These entities had been scheduled to begin compliance in separate phase-in dates, with Phase 5 entities to begin compliance on September 1, 2020, and Phase 6 entities on September 1, 2021. On May 28, 2020, the Commission adopted an interim final rule delaying the compliance date for Phase 5 entities until September 1, 2021, to address the operational challenges faced by these entities as a result of the COVID–19 pandemic.

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[2] 7 U.S.C. 6s(e) (capital and margin requirements).

[3] CEA section 1a(47), 7 U.S.C. 1a(47) (swap definition); Commission regulation 1.3, 17 CFR 1.3 (further definition of a swap). A swap includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term ''prudential regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of prudential regulator further specifies the entities for which these agencies act as prudential regulators. The prudential regulators published final margin requirements in November 2015. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule''). The Prudential Margin Rule is substantially similar to the CFTC Margin Rule, including with respect to the CFTC's phasing-in of margin requirements, as discussed below.

[5] CEA section 4s(e)(1)(B), 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a prudential regulator must meet the margin requirements for uncleared swaps established by the applicable prudential regulator. CEA section 4s(e)(1)(A), 7 U.S.C. 6s(e)(1)(A).

[6] CEA section 4s(e)(2)(B)(ii), 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[7] CEA section 1a(49), 7 U.S.C. 1a(49) (swap dealer definition); Commission regulation 1.3 (further definition of swap dealer).

[8] CEA section 1a(32), 7 U.S.C. 1a(32) (major swap participant definition); Commission regulation 1.3 (further definition of major swap participant).

[9] CEA section 4s(e)(3)(A), 7 U.S.C. 6s(e)(3)(A).

[10] Initial margin is the collateral (calculated as provided by Commission regulation 23.154) that is collected or posted in connection with one or more uncleared swaps pursuant to regulation 23.152. Initial margin is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out). *See* CFTC Margin Rule, 81 FR at 683.

[11] Variation margin, as defined in Commission regulation 23.151, is the collateral provided by a party to its counterparty to meet the performance of its obligations under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided. 17 CFR 23.151.

[12] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission regulation 23.160, 17 CFR 23.160, providing rules on its cross-border application. *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[13] 17 CFR 23.161(a). On July 10, 2020, the Commission published a notice of proposed rulemaking proposing to amend Commission regulation 23.161(a)(7) by deferring the compliance date for entities with an average aggregate notional amount between $8 billion and $50 billion, from September 1, 2021, to September 1, 2022. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 41463 (July 10, 2020) (''July 2020 Proposal''). The notice of proposed rulemaking herein describes current Commission requirements under the CFTC Margin Rule. If the July 2020 Proposal becomes final prior to this notice of proposed rulemaking, all references to September 1, 2021, referring to the beginning of the last phase of compliance under the phased compliance schedule, should be deemed automatically superseded and replaced with September 1, 2022.

[14] The schedule also addresses the variation margin requirements under the CFTC Margin Rule, providing a compliance period of September 1, 2016, through March 1, 2017. *See* 17 CFR 23.161(a). The compliance period (including a six-month extension to September 1, 2017 through no-action relief) has long expired and all eligible entities are required to comply with the VM requirements.

[15] 17 CFR 23.161(a)(6).

[16] The term ''covered counterparty'' is defined in Commission regulation 23.151 as a financial end user with MSE or a swap entity, including an SD or MSP, that enters into swaps with a CSE. *See* 17 CFR 23.151.

[17] Commission regulation 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, or August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. A company is a ''margin affiliate'' of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (i) or (ii) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

[18] 17 CFR 23.161(a)(7).

Because it was unclear what the impact of the pandemic would be on Phase 6 entities, the Commission did not deem appropriate to postpone these entities' September 1, 2021 compliance date through the interim final rule process. As a result, Phase 5 and Phase 6 entities are now required to begin compliance on September 1, 2021.

Under the Commission's margin requirements, the method for determining when Phase 6 entities are required to comply with the CFTC's IM requirements beginning with the last phase of compliance differs from the method set out in the BCBS/IOSCO Framework.[19] More specifically, the BCBS/IOSCO Framework requires—beginning on September 1, 2022, which starts the last phase of implementation for the margin requirements under the framework—entities with €8 billion [20] in AANA during the period of March, April, and May of the current year, based on an average of month-end dates, to exchange IM beginning September 1 of each year.

In contrast, in the last phase of compliance under the phased compliance schedule, under the Commission's margin requirements, Phase 6 entities (*i.e.,* CSEs and FEUs with more than $8 billion in AANA, or MSE) are required to begin exchanging IM on September 1, 2021. The MSE for an FEU must be determined on September 1, 2021, based on daily AANA (accounting only for business days) [21] during the period of June, July, and August of the prior year. After the last phase of compliance, the determination of MSE for an FEU, which triggers the applicability of the IM requirements, must be conducted on January 1 of each calendar year based on daily AANA during the June, July, and August period of the prior year, with application of the IM requirements, if the FEU has MSE, required to begin on January 1 of each year.

The BCBS/IOSCO Framework was originally promulgated in September 2013,[22] and then revised in 2015.[23] The 2015 version of the BCBS/IOSCO Framework changed the calculation period of June, July, and August, with an annual implementation date of December 1, to March, April, and May of each calendar year, with an annual implementation date of September 1. The CFTC Margin Rule incorporated the earlier 2013 version of the BCBS/IOSCO Framework by adopting the June, July, and August calculation period for the annual calculation of MSE. As a result, the Commission's existing regulations do not reflect the calculation period of March, April, and May set forth in the revised BCBS/IOSCO Framework published in March 2015.

The Commission also departed from BCBS/IOSCO's month-end date calculation of AANA for determining whether an entity is subject to the IM requirements. In the preamble to the CFTC Margin Rule, the Commission stated that it decided to adopt a daily AANA calculation method for determining whether an FEU has MSE, the finding of which requires a CSE to exchange IM with the FEU, ''to gather a more comprehensive assessment of the [FEU]'s participation in the swaps market, and to address the possibility that a market participant might 'window dress' its exposure on an as-of date such as year-end, in order to avoid the Commission's margin requirements.'' [24]

As a result, the Commission's current method for the annual calculation of MSE, which was adopted in coordination with the U.S. prudential regulators and is similar to the U.S. prudential regulators' method of calculation, is not consistent with the most recent version of the BCBS/IOSCO Framework. Nor is it consistent with requirements in other major market jurisdictions, most of which adopted the 2015 BCBS/IOSCO Framework's month-end date calculation of AANA using the period of March, April, and May for the purposes of determining whether an entity is subject to the IM requirements beginning in the last phase of implementation.[25]

Market participants have stated that these differences in the methods for determining when an entity comes within the scope of the IM requirements and the timing for compliance after the last phase of compliance may impose an undue burden on their efforts to comply with the CFTC's margin requirements.[26] Entities have to account for different compliance schedules and set up and maintain separate processes for determining when they meet the thresholds for IM compliance.[27]

B. No-Action Letter Concerning the Calculation of IM

The Commission's Division of Swap Dealer and Intermediary Oversight (''DSIO'') issued CFTC No-Action Letter 19–29 in July 2019 in response to a request for relief submitted by Cargill Incorporated (''Cargill''), a CFTC-registered SD and CSE.[28] DSIO stated that it would not recommend enforcement action if Cargill used the risk-based model calculation of IM of a counterparty that is a CFTC-registered SD as the amount of IM that Cargill is required to collect from the SD and to determine whether the IM threshold amount of $50 million (''IM threshold amount'') [29] has been exceeded, which would trigger the requirement for

[19] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), *https://www.bis.org/bcbs/publ/d475.pdf* (''2019 BCBS/IOSCO Framework'').

[20] The U.S. adopted the BCBS/IOSCO threshold, but replaced the 8 billion euro figure with a dollar amount of $8 billion. As a result, there is a small disparity in the threshold amounts given the continuing fluctuation of the dollar-euro exchange rate. This rule proposal does not address this issue.

[21] The determination of MSE requires accounting for the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. *See* definition of MSE *supra* note 17. For simplicity purposes, this formulation will be referred to hereinafter as ''daily AANA.''

[22] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (Sept. 2013), *https://www.bis.org/publ/bcbs261.htm.*

[23] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), available at *https://www.bis.org/bcbs/publ/d317.htm.*

[24] 81 FR at 645.

[25] *See, e.g.,* Commission Delegated Regulation (EU) 2016/2251 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC Derivatives, Central Counterparties and Trade Repositories with Regard to Regulatory Technical Standards for Risk-Mitigation Techniques for OTC Derivative Contracts Not Cleared by a Central Counterparty (Oct. 4, 2016), Article 28(1), *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&from=EN.* Financial Services Agency of Japan (JFSA) Cabinet Office Ordinance on Financial Instruments Business (Cabinet Office Ordinance No. 52 of August 6, 2007), as amended (March 31, 2016), Article 123(11)(iv)(c); Office of the Superintendent of Financial Institutions Canada (OSFI) Guideline No. E–22, Margin Requirements for Non-Centrally Cleared Derivatives (April 2020), Section 5, 71, *https://www.osfi-bsif.gc.ca/Eng/Docs/e22.pdf.*

[26] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, April 2020 at, 48–54, *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download* (''Margin Subcommittee Report'' or ''Report'').

[27] *See id.*

[28] CFTC Letter No. 19–29, Request for No-Action Relief Concerning Calculation of Initial Margin (Dec.19, 2019) (''Letter 19–29''), *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/19-29.pdf.*

[29] Under Commission regulation 23.154(a)(3), SDs and MSPs subject to the Commission's regulations are not required to post or collect IM until the initial margin threshold amount has been exceeded. *See* 17 CFR 23.154(a)(3). The term ''initial margin threshold amount'' is defined in Commission regulation 23.151 to mean an aggregate credit exposure of $50 million resulting from all uncleared swaps between an SD and its margin affiliates (or an MSP and its margin affiliates) on the one hand, and the SD's (or MSP's) counterparty and its margin affiliates on the other. *See* 17 CFR 23.151.

documentation concerning the posting, collection, and custody of IM collateral.

C. Market Participant Feedback

The CFTC's Global Markets Advisory Committee (''GMAC'') established a subcommittee in January 2020 to consider issues raised by the implementation of margin requirements for non-cleared swaps, to identify challenges associated with forthcoming implementation phases, and to make recommendations through a report for the GMAC to consider in advising the Commission. The subcommittee submitted the Margin Subcommittee Report to the GMAC with its recommendations.[30] The GMAC adopted the Report and recommended to the Commission that it consider adopting the Report's recommendations.

Among other things, the Margin Subcommittee Report recommended alignment of the CFTC Margin Rule with the BCBS/IOSCO Framework with respect to the method for calculating AANA for determining whether an entity comes within the scope of the IM requirements and the timing of compliance after the end of the phased compliance schedule.[31] The Report also recommended the codification of Letter 19–29.[32]

The Commission believes that alignment with BCBS/IOSCO, the global standard setter for margin requirements for non-cleared derivatives, would promote harmonization in the application of the IM requirements. Moreover, the Commission does not believe that the disjunction between the CFTC and BCBS/IOSCO regarding the AANA calculation method and the timing of compliance furthers any regulatory purpose. In fact, the Commission notes the foreseeable possibility of calculation errors resulting from differences in the calculation methods.[33]

The Commission also believes that adopting regulations along the lines of narrowly-tailored no-action letters, such as Letter 19–29, could promote certainty and clarity, facilitating efforts by market participants to take the application of the Commission's regulations into account in their planning, without undermining the effectiveness of the CFTC Margin Rule. Moreover, the proposed amendment would promote efficient risk hedging by smaller CSEs that offer swaps services to smaller entities that are neither SDs nor MSPs, with some of those risk-taking transactions requiring the exchange of regulatory margin and some, at the option of the parties, requiring the exchange of contractually-agreed margin. The CSEs might then enter into offsetting swaps with SDs and MSPs to hedge the risk associated with the risk-taking transactions. Due to their size and limited swap business and resources, the CSEs may find it uneconomical to develop and maintain a margin model, and would therefore benefit from the option to rely on their SD or MSP counterparties' IM model calculations.

II. Proposed Amendments

The Commission is proposing to revise the method for calculating AANA for determining whether an FEU has MSE and the timing for compliance with the IM requirements after the end of the last phase of compliance to align these aspects of the CFTC Margin Rule with the BCBS/IOSCO Framework. The Commission is also proposing to amend Commission regulation 23.154(a) in a manner similar to the terms of Letter 19–29, and thus allow CSEs to use the risk-based model calculation of IM of counterparties that are CFTC-registered SDs or MSPs (''swap entities'') [34] to determine the amount of IM that must be collected from such counterparties.

A. Commission Regulation 23.151—Amendments to MSE Definition

As noted above, the exchange of IM with respect to uncleared swaps between a CSE and a counterparty that is an FEU with MSE (together, Phase 6 entities) is required in the last phase of compliance, which is scheduled to begin on September 1, 2021.[35] Commission regulation 23.151 provides that an entity has MSE if it has more than $8 billion in average daily AANA during June, July, and August of the prior year.[36] An FEU that has MSE based on its calculation of AANA over June, July, and August of 2020 will come within the scope of the IM requirements beginning on September 1, 2021. After September 1, 2021, however, because the base year for calculating AANA is the prior year, the annual determination of MSE, which triggers the applicability of the IM requirements, would be on January 1 of each year,[37] using the AANA for June, July, and August of the prior year. If the FEU has MSE on January 1 of a given year, the FEU would come within the scope of the IM requirements on January 1 of such year. As such, a CSE would be required to exchange regulatory IM beginning on such January 1 for its uncleared swaps with such FEU.

The Commission proposes to amend the definition of MSE in Commission regulation 23.151 by replacing ''June, July and August of the previous calendar year'' with ''March, April and May of that year.'' The period for calculating AANA for determining whether an FEU has MSE would thus be March, April, and May of ''that year.'' ''That year'' would be understood to mean the year the MSE is calculated for determining whether the IM requirements apply. The calculation of MSE is precipitated by Commission 23.161(a)(7), which requires a CSE to exchange IM with a counterparty that is an FEU with MSE beginning on September 1, 2021, and thereafter.

The Commission is also proposing to amend the definition of MSE to set ''September 1 of any year'' as the determination date for MSE. Under the current requirements, the MSE for an FEU must be determined beginning on September 1, 2021, and subsequently, after the last phase of compliance, on January 1 of each year. The proposed amendment would change the date of determination of MSE, applicable after the last phase of compliance, from January 1 to September 1. Because having MSE triggers the applicability of the IM requirements for an FEU, requiring the CSE to post and collect IM with its FEU counterparty, the proposed amendment would effectively set the timing for compliance with the IM requirements on September 1 after the last phase of compliance with respect to

[30] *See supra* note 26.

[31] *See* Margin Subcommittee Report at 48–54.

[32] *See* Margin Subcommittee Report at 34–36.

[33] The possibility of calculation errors may be mitigated by substituted compliance, as described in Commission regulation 23.160, if the parties are non-U.S. entities and substituted compliance is available, as the parties would be able to avail themselves of the rules in the foreign jurisdiction and would therefore not face the concern about different calculation methods. However, while the proposed changes to the method of calculation of AANA would align the CFTC's method of calculation with BCBS/IOSCO's approach, the Commission acknowledges that the changes would result in a divergence from the U.S. prudential regulators' approach, which may increase the potential for calculation errors for entities located in the United States.

[34] Commission regulation 23.151 defines the term ''swap entity'' as a person that is registered with the Commission as an SD or MSP under the CEA.

[35] *See* 17 CFR 23.161(a)(7), which requires that a CSE must comply with the CFTC IM requirements with respect to their uncleared swaps with counterparties that are FEUs with MSE beginning on September 1, 2021.

[36] 17 CFR 23.151.

[37] January 1 is not explicitly set out in the Commission's regulations as the determination date for MSE after the last phase of compliance. However, Commission regulation 23.161(a)(7) (addressing the last phase of compliance and the timing of compliance going forward) and the definition of MSE in Commission regulation 23.151 can be reasonably read together to set January 1 as the determination date. *See* 17 CFR 23.151; 17 CFR 23.161(a)(7).

uncleared swaps entered into by a CSE and an FEU with MSE.

The proposed shift of the MSE determination date from January 1 to September 1 could have the effect of deferring for nine months for 2022 [38] the obligation to exchange IM with a firm that was not in scope on September 1, 2021, but would be subject to the IM requirements on January 1, 2022. As a result, in 2022, less collateral would be collected for uncleared swaps during the nine-month period, which could render uncleared swap positions riskier and increase the risk of contagion and systemic risk. The Commission, however, notes that because the deferral period would affect entities with lower AANAs than entities brought into scope in earlier phases, the potential uncollateralized risk would be mitigated, becoming a lesser concern, particularly because the proposed change in the MSE determination date would draw the Commission's rules closer to BCBS/IOSCO's approach, promoting international harmonization.

Conversely, the change in the MSE determination date could also result in requiring certain entities to post and collect IM that would not otherwise be required to do so. This could occur when an FEU meets the MSE threshold in the last phase of compliance beginning on September 1, 2021, but falls below the threshold by January 1, 2022, because the AANA for June, July, and August of the prior year (*i.e.,* 2021) has declined below $8 billion. In such case, under the current rule, a CSE would no longer be subject to the IM requirements with respect to such FEU beginning January 1, 2022. However, under the proposed amendment, the CSE would continue to be subject to the IM requirements with respect to such FEU through September 1, 2022, and, as a result, the CSE would be required to exchange IM with the FEU for nine months longer than the January 1, 2022 MSE determination date would have required.

These proposed amendments to the definition of MSE would have the effect of reducing the time frame that FEUs and their CSE counterparties would have to prepare for compliance with the IM requirements. Under the current rule, exchange of regulatory IM is required with respect to Phase 6 entities beginning on September 1, 2021, which starts the last phase of the phased compliance schedule.[39] The MSE for the FEU must be determined using the AANA for the June, July, and August period of the prior year (*i.e.,* 2020). As a result, for the last phase of compliance in 2021, a CSE and FEU will have at least twelve months to prepare in anticipation of compliance with the IM requirements. Under the proposed amendment, however, for the last phase of compliance in 2021, the CSE and FEU would have only 3 months because MSE would be determined using the AANA for the March, April, and May period of the current year (*i.e.,* 2021).

Also, after the last phase of compliance under the phased compliance schedule, as proposed, the date for determining MSE for an FEU would be September 1 of each year, and the AANA calculation period for determining whether an FEU has MSE would be March, April, and May of such year. As a result, under the proposed amendment, an FEU with MSE and its CSE counterparty would have three months to prepare in advance of compliance with the IM requirements, whereas under the current rule, such parties have four months because MSE must be determined on January 1 based on the AANA for June, July, and August of the prior year.

Market participants recognize the effects of the proposed changes on the time frame for preparing for compliance with the IM requirements, with greater impact on Phase 6 entities that are coming into scope in the last phase of compliance, compared to those entities subject to compliance after the end of the last compliance phase. Nevertheless, the Margin Subcommittee Report, which the GMAC has adopted and recommended to the Commission, supported the changes because they would reconcile the CFTC's margin requirements with the BCBS/IOSCO Framework.[40] The proposed changes would eliminate the need to maintain separate schedules and processes for the computation of AANA and reduce the burden and cost of compliance with the IM requirements.[41] For the reasons set forth above, and taking account of Section 752 of the Dodd-Frank Act that calls on the CFTC to ''consult and coordinate'' with respect to the establishment of consistent international standards,[42] the Commission preliminarily believes that amending the definition of MSE by replacing ''June, July and August of the previous calendar year'' with ''March, April and May of that year'' and by prescribing September 1 of each year as the MSE determination date is appropriate to harmonize its compliance schedule with that of the BCBS/IOSCO Framework and eliminate a disjunction that risks calculation errors and may hinder compliance with the IM requirements.

The Commission is also proposing to amend the requirement to use daily average AANA during the three-month calculation period for determining MSE (''daily AANA calculation method''). The proposed amendment would instead require the use of average month-end AANA during the three-month calculation period (''month-end AANA calculation method''). In adopting the CFTC Margin Rule, the Commission acknowledged that the use of the month-end AANA calculation method would be consistent with BCBS/IOSCO's approach. Nonetheless, the CFTC, along with the U.S prudential regulators, adopted the daily AANA calculation method. In the preamble to the CFTC Margin Rule, the Commission explained that a daily average AANA calculation would provide a more comprehensive assessment of an FEU's participation in the swaps market in determining whether the FEU has MSE and would address the possibility of window dressing of exposures by market participants that might seek to avoid the CFTC's margin requirements.[43]

In the Margin Subcommittee Report, the GMAC subcommittee stated that the daily AANA calculation method entails more work for smaller counterparties and that the method is only used in the United States, noting that in the United States, daily AANA calculations over the three-month calculation period for Phase 5 required 64 observations while global determinations based on month-end AANA calculations required only three observations.[44] The Report further stated that a month-end AANA calculation, by accounting for three periodic dates on which AANA would

[38] If the July 2020 Proposal becomes final prior to this notice of proposed rulemaking, all references to 2022 for the purpose of referring to the period after the end of the last phase of compliance under the phased compliance schedule should be deemed automatically superseded and replaced with 2023.

[40] *See* Margin Subcommittee Report at 49 (Members of the Margin Subcommittee stated that the divergence between the U.S. and international requirements ''creates complexity and confusion, and leads to additional effort, cost and compliance challenges for smaller market participants that are generally subject to margin requirements in multiple global jurisdictions.'').

[41] The Commission acknowledges that the burdens on market participants would not be fully eliminated, and in fact, may increase, for those entities that enter into uncleared swaps with SDs and MSPs that are subject to the prudential regulators' margin requirements for uncleared swaps and come within the scope the prudential regulators' margin regime, as the prudential regulators have not revised their rules consistent with the amendments proposed herein.

[42] *See s*ection 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[43] *See supra* note 24.

[44] Margin Subcommittee Report at 52.

be calculated, would mitigate the risk that market participants would adjust exposures to avoid the CFTC's margin requirements, and that it would be neither practicable nor financially desirable for parties to tear-up their positions on a recurring basis prior to each month-end AANA calculation, as it would interfere with their hedging strategies and cause them to incur realized profit and loss.[45]

The Commission believes that it is appropriate to propose the month-end AANA calculation method to determine whether an FEU has MSE because such method of calculation would align the CFTC's approach with the BCBS/IOSCO Framework and that of other major market jurisdictions. The Commission notes that there is the risk that market participants that are counterparties to CSEs may ''window dress'' their exposures by adjusting their exposures as they approach the month-end date for the calculation of AANA. In doing so, an FEU would no longer have to post and collect IM with all CSEs for all its uncleared swaps for at least twelve months from the date on which compliance with the IM requirements would have been initially required.[46] The Commission believes that it has sufficient tools at its disposal to address the ''window dressing'' concern. In particular, the Commission notes that Commission regulation 23.402(a)(ii) requires CSEs to have written policies and procedures to prevent their evasion, or participation in or facilitation of an evasion, of any provision of the CEA or the Commission regulations.[47] The Commission also reminds market participants that are counterparties to CSEs that section 4b of the CEA prohibits any person entering into a swap with another person from cheating or defrauding or willfully deceiving or attempting to deceive the other person.[48]

The Commission acknowledges that replacing the daily AANA calculation method with the month-end AANA calculation method for determining MSE could result in an AANA calculation that is not fully representative of an entity's participation in the swap markets. The current definition of MSE provides that AANA must be calculated counting uncleared swaps, uncleared security-based swaps, foreign exchange forwards, or foreign exchange swaps. Some of these financial products because of their terms, such as tenure and time of execution, may be undercounted or excluded from the AANA calculation if month-end dates are used to determine MSE.[49] The proposed month-end AANA calculation method therefore may not account for products that are required to be included in the calculation.

The Commission preliminarily believes that the notional amounts associated with products that may be excluded from the AANA calculation may be relatively low and that their contribution to the AANA calculation for the purpose of determining MSE may be insignificant. In this regard, in an exercise undertaken by the Commission's Office of the Chief Economist (''OCE'') on a sample of days, the OCE estimated (setting aside the window dressing issue) that calculations based on end-of-month AANA would yield fairly similar results as calculations based on the current daily AANA approach. Based on 2020 swap data, the OCE estimated that 492 entities of the 514 entities that would come into scope during Phase 6 based on the current methodology would also come into scope in the event that the Commission were to adopt the proposed methodology. Put differently, all but 22 of the entities that are above MSE under the current methodology would also be above MSE under the proposed methodology. In addition, there are 20 entities that would be in scope under the proposed methodology, but would not be in scope under the current methodology, so that the aggregate number of Phase 6 entities under the current and proposed methodologies differs only by two. In aggregate, the two methodologies would capture quite similar sets of entities. In addition, the entities that fall out of scope applying the month-end methodology tend to be among the smallest of the Phase 6 entities. That is, entities that are in-scope under the current methodology but not the proposed methodology average $6.95 billion in AANA, compared to $20 billion for all Phase 6 entities.[50]

In the Commission's preliminary view, based on the OCE analysis discussed above, switching from daily AANA calculations to month-end calculations for the purpose of determining MSE would likely have a limited impact on the protections provided by the CFTC Margin Rule. The Commission also preliminary believes that the benefits of aligning with the BCBS/IOSCO Framework and the approach of other major market jurisdictions outweigh the window dressing concerns.[51]

The Commission requests comments regarding the general approach proposed for changes to Commission regulation 23.151. The Commission also specifically requests comment on the following questions:

- Are the proposed amendments appropriate in light of the CFTC's overall approach to uncleared margin requirements and the manner in which firms currently undertake the calculation of AANA to determine MSE? Should the Commission consider any alternative to aligning with the BCBS/IOSCO Framework with respect to the methodology for the AANA calculation and the timing for compliance after the last phase of compliance?
- Should the Commission proceed to adopt the proposed amendments if the U.S. prudential regulators do not adopt similar regulatory changes? Would this divergence between the CFTC and the prudential regulators' margin requirements for uncleared swaps affect market participants? Is there a potential for industry confusion if that were to be the case?
- In adopting the CFTC Margin Rule, the Commission stated that the daily AANA calculation method was intended to provide a more comprehensive assessment of an FEU's participation in the swaps markets. Would the proposed month-end AANA calculation method requiring the averaging of month-end dates during the three-month calculation period be representative of a market participant's participation in the swaps markets? Is it

[45] *Id.*

[46] As proposed, the MSE calculation would be made annually on September 1 of each year and would be in effect for the next twelve months after that date.

[47] 17 CFR 23.402(a)(ii).

[48] 7 U.S.C. 6b.

[49] For example, the Commission observes that certain physical commodity swaps such as electricity and natural gas swaps are products for which a month-end AANA calculation might not provide a comprehensive assessment of the full scope of an FEU's exposure to those products.

[50] Note that the OCE calculation excludes commodity swaps, and the examples of products for which end-of-month calculations may be undercounting tend to be in commodity swaps like natural gas and electricity swaps. Overall, commodity swaps tend to represent less than 1% of all swap trades. *See* BIS Statistic Explorer, Global OTC derivatives market (July 30, 2020), *https://stats.bis.org/statx/srs/table/d5.1?f=pdf.*

[51] The prudential regulators have not indicated whether they intend to amend their margin requirements consistent with the BCBS/IOSCO Framework and the proposed amendments to the definition of MSE discussed herein. Below, the Commission requests comment on the impact of this potential regulatory divergence on market participants. Also of note, the U.S. Securities and Exchange Commission (''SEC'') has adopted a different approach that does not use MSE for identifying entities that come within the scope of the SEC margin requirements. *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 FR 43872 (Aug. 22, 2019).

possible that the proposed month-end calculation would result in the exclusion or undercounting of certain products because of their terms, such as tenure and time of execution, or for any other reason, that are required to be included in the AANA calculation? Could the calculation lead to skewed results for entities that have an AANA calculation on the three end-of-month dates that is uncharacteristically high compared to their typical positions?

• How likely and significant is the risk that market participants may ''window dress'' their exposures to avoid the CFTC's margin requirements? In the event that this is a significant impediment to an accurate calculation of AANA over a three month period, are the existing tools at the Commission's disposal sufficient to address this concern? Are there additional steps the Commission should consider if the Commission were to implement the month-end calculation methodology?

B. Commission Regulation 23.154—Alternative Method of Calculation of IM

The CFTC Margin Rule requires CSEs to collect and post IM with covered counterparties.[52] Commission regulation 23.154(a) directs CSEs to calculate, on a daily basis, the IM amount to be collected from covered counterparties and to be posted to FEU counterparties with MSE.[53] CSEs have the option to calculate the IM amount by using either a risk-based model or the standardized IM table set forth in Commission regulation 23.154(c)(1).[54] For a CSE that elects to use a risk-based model to calculate IM, Commission regulation 23.154(b)(1) requires the CSE to obtain the written approval of the Commission or a registered futures association [55] to use the model to calculate IM required by the Commission's margin requirements for uncleared swaps.[56]

The Commission is proposing to amend Commission regulation 23.154(a) along the lines of Letter 19–29 by adding proposed paragraph (a)(5). The proposed paragraph would permit a CSE that enters into uncleared swaps with a swap entity to use the swap entity's risk-based model calculation of IM in lieu of its own IM calculation. The risk-based model used for the calculation of IM would need to satisfy the requirements set out in Commission regulation 23.154(b) or would need to be approved by the swap entity's prudential regulator.

Letter 19–29 sets out certain situations in which DSIO would not recommend an enforcement action under Commission regulation 23.154(a)(1), which requires CSEs to calculate, on a daily basis, IM to be collected from a covered counterparty, including swap entities and FEUs with MSE. Letter 19–29 conveyed the staff's view that Cargill, the requester for relief, could use the risk-based model calculation of IM of a counterparty that is a swap entity to determine the amount of IM to be collected from that counterparty and to determine whether the IM threshold amount has been exceeded, which would require the parties to have documentation addressing the collection, posting, and custody of IM. The proposed amendment, consistent with Letter 19–29, would modify the requirement that CSEs calculate the IM to be collected from a swap entity counterparty and would give CSEs the option to use such counterparty's risk-based IM calculation to determine the amount of IM to be collected from the counterparty.

The Commission acknowledges that expanding the use of the alternative method in Letter 19–29 to a wider group of CSEs could raise some concerns. Being able to rely on the IM risk-based calculation of a swap entity counterparty, as would be permitted under the proposal, CSEs may forgo altogether the adoption of a risk-based model and may be less incentivized to monitor IM exposures on a regular basis. Without a model to compute its own IM, a CSE may lack reasonable means to verify the IM provided by its counterparty or recognize any shortfalls in the IM calculation or flaws in the counterparty's risk-based model. As a result, the CSE may collect insufficient amounts of IM to offset counterparty risk. There is also the concern that the swap entity calculating the IM for the CSE may be conflicted,[57] as it may have a bias in favor of calculating and posting lower amounts of IM to its CSE counterparty.

In light of these concerns, Letter 19–29 imposed certain conditions for the application of the relief.[58] The Commission believes that it is appropriate that the proposed amendment incorporate in the rule text two conditions set forth in the no-action letter. Other conditions from the no-action letter would not be reflected in the rule text, because the Commission believes that the conditions are adequately addressed by existing requirements under the Commission's regulations, as explained below. In addition, if the proposed amendment is adopted, the Commission notes that it will monitor its implementation by CSEs and may consider further rulemaking as appropriate.

First, consistent with Letter 19–29, the proposed rule text would require that the applicable model meet the requirements of Commission regulation 23.154(b) (requiring the approval of the use of the model by either the Commission or the NFA), or that it be approved by a prudential regulator.[59]

Second, the proposed rule text would provide that the CSE would be able to use the risk-based model calculation of IM of a swap entity counterparty only if the uncleared swaps for which IM is calculated are entered into for the purpose of hedging the CSE's own risk. In this context, the risk to be hedged would be the risk that the CSE would incur when entering into swaps with non-swap entity counterparties. By proposing to limit the application of this alternative method of calculation of IM only to uncleared swaps entered into for the purpose of hedging risk arising from swaps entered into with non-swap entities, the Commission would ensure its narrow application.

The Commission contrasts the risk of customer-facing swaps with the risk that CSEs incur when entering into a swap in a dealing capacity ''to accommodate the demand'' of a swap entity counterparty.[60] The Commission believes that it would be inappropriate to allow a CSE to use the IM calculation of the swap entity counterparty in this latter case. The Commission notes that the latter case (*i.e.,* where the CSE is acting in a dealing capacity for a

[52] *See* 17 CFR 23.152.

[53] *See* 17 CFR 23.154(a).

[54] *See id.*

[55] *See* 17 CFR 23.154(b)(1)(i). In this context, the term ''registered futures association'' refers to the National Futures Association (''NFA''), which is the only futures association registered with the Commission.

[56] *See* 17 CFR 23.154(b)(1)(i).

[57] The Commission notes, however, that the potential for conflict may be reduced as the swap entity, as a CFTC-registered SD or MSP, would be subject to Commission regulation 23.600, which requires SDs and MSPs to establish a risk management program for the management and monitoring of risk, including credit and legal risk, associated with their swaps activities. *See* 17 CFR 23.600.

[58] Letter 19–29 at 4.

[59] The prudential regulators have not amended their margin requirements for uncleared swaps consistent with the proposed amendment to Commission regulation 23.154(b) discussed herein. As such, the CFTC's margin requirements would diverge from the prudential regulators' approach. Below, the Commission seeks comment on how this regulatory divergence may impact market participants.

[60] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30608 (May 23, 2012) (noting that a distinguishing characteristic of swap dealers is being known in the industry as being available to accommodate demand for swaps.).

counterparty that is itself calculating IM) would occur in the inter-dealer market for swaps. The Commission believes that a CSE participating in the inter-dealer market in a dealing capacity should have the capacity to develop, implement, and use an approved risk-based model.

The Commission expects that the alternative method of calculation would be used primarily by CSEs that are not obtaining approval to use a risk-based model for the calculation of IM but rather elect to use the table-based calculation described in Commission regulation 23.154(c) for swaps with non-swap entity counterparties. The Commission anticipates that such CSEs would enter into uncleared swaps mostly with end-user, non-swap entity counterparties, and would then hedge the risk of those swaps with uncleared swaps entered into with a few swap entity counterparties. The CSEs and their swap entity counterparties would be required to exchange IM for the uncleared swaps entered into for the purpose of hedging. Because maintaining a model would impose a disproportionate burden on the CSEs relative to the discrete and limited nature of their uncleared swap activities, the CSEs may not have a risk-based model for the calculation of IM and may opt to use instead the risk-based model calculation of their swap entity counterparties.

To obtain relief under Letter 19–29, Cargill, prior to using the risk-based model calculation of IM of a swap entity counterparty, must agree with the counterparty in writing that the IM calculation will be provided to Cargill in a manner and time frame that would allow Cargill to comply with the CFTC Margin Rule and other applicable Commission regulations, and that the calculation will be used to determine the amount of IM to be collected from the counterparty and to determine whether the IM threshold amount has been exceeded, which would require documentation addressing the posting, collection, and custody of IM. The Commission preliminarily believes that the documentation requirements in Commission regulations 23.158 and 23.504 address this no-action letter condition.

Commission regulation 23.158(a) requires CSEs to comply with the documentation requirements set forth in Commission regulation 23.504.[61] In turn, Commission regulation 23.504(b)(4)(i) requires CSEs to have written documentation reflecting the agreement with a counterparty concerning methods, procedures, rules, and inputs, for determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap for the purposes of complying with the margin requirements under section 4s(e) of the Act and regulations under this part.[62] Regulation 23.504(b)(3)(i) also provides that the documentation shall include credit support arrangements, including initial and variation margin requirements, if any.[63]

The last two conditions of Letter 19–29[64] were designed to ensure that Cargill would undertake adequate risk management of its uncleared swaps, notwithstanding the lack of a proprietary risk-based model and hence the inability to calculate IM, which is representative of potential future exposure of uncleared swaps.[65] The Commission believes that these conditions are addressed by CSEs' risk management obligations under the CEA and the Commission's regulations. Section 4s(j)(2) of the CEA requires SDs and MSPs, including CSEs, to establish robust and professional risk management systems adequate for the management of their day-to-day swap business.[66] In addition, Commission regulation 23.600 requires SDs and MSPs to establish and maintain a risk management program to monitor and manage risk associated with their swap activities.[67]

To obtain relief under Letter 19–29, Cargill also must ''keep track of exceedances'' and ''[if] the exceedances indicate that the Approved IM Calculation Method fails to meet the relevant regulators' standards, [Cargill] must take appropriate steps to ensure compliance with its risk management obligations and address exceedances with its SD counterparty.'' [68] The purpose of this requirement is to ensure that Cargill monitors, identifies, and addresses potential shortfalls in the amount of IM generated by the counterparty. Cargill must also report to the CFTC ''any adjustments and enhancements . . . applied to the amount of IM calculated pursuant to the Approved IM Calculation Method to ensure [Cargill's] collection of adequate amounts of IM.''

The Commission preliminarily believes that Commission regulation 23.600 addresses these concerns by requiring SDs and MSPs to account for credit risk in conducting their risk oversight and to ensure compliance with the CFTC margin requirements. In the case of a CSE relying on the provisions of proposed paragraph (a)(5), adequate risk oversight would include steps by the CSE to monitor, identify, and address potential shortfalls in the amounts of IM generated by the counterparty on whose IM model the CSE is relying. While the Commission does not propose to prescribe the CSE's oversight process, it believes that a risk management program that is unable to identify or to address shortfalls in IM would be insufficient to comply with Regulation 23.600.

Moreover, Commission regulation 23.600 requires SDs and MSPs to furnish to the Commission risk exposure reports setting forth credit risk exposures and any other applicable risk exposures relating to their swap activities. Here again, the Commission believes that an adequate risk exposure

[61] 17 CFR 23.158(a).

[62] 17 CFR 23.504(b)(4)(i).

[63] Commission regulation 23.504(b)(1) further provides that the documentation shall include all terms governing the trading relationship between the swap dealer or major swap participant and its counterparty, including without limitation terms addressing payment obligations calculation of obligations upon termination valuation, and dispute resolution. 17 CFR 23.504(b)(1).

[64] Letter 19–29 at 4. The last two conditions in Letter 19–29 (which refers to Cargill's swap dealer as ''CRM SD'') read as follows:

4. To the extent CRM SD uses an SD counterparty's IM calculation generated pursuant to an Approved IM Calculation Method, CRM SD must monitor the Approved IM Calculation Method's output, in particular, to ensure the sufficiency of the calculated IM amounts. CRM SD must keep track of exceedances, that is, price movements above the amounts of IM generated pursuant to an Approved IM Calculation Method. If the exceedances indicate that the Approved IM Calculation Method being used fails to meet the relevant regulators' standards, CRM SD must take appropriate steps to ensure compliance with its risk management obligations and address the exceedances with its SD counterparty. If any adjustments or enhancements are applied to the amount of IM calculated pursuant to the Approved IM Calculation Method to ensure CRM SD's collection of adequate amounts of IM, CRM SD must provide written notice by email to NFA and Commission staff at *SwapsMarginModel@NFA.Futures.Org* and *dsioletters@cftc.gov,* respectively. CRM SD must also have an independent risk management unit, as prescribed in Commission regulation 23.600, perform an annual review of the Approved IM Calculation Method's output. CRM SD should be prepared to produce, upon request, records relating to the monitoring of the Approved IM Calculation Method output and any other records demonstrating CRM SD's ongoing monitoring.

5. As part of its risk management program pursuant to Commission regulation 23.600, CRM SD must independently monitor on an ongoing basis credit risk, including potential future exposure associated with uncleared swaps subject to the CFTC Margin Rule, to determine, among other things, whether CRM SD is approaching the $50 million IM Threshold with respect to a counterparty.

[65] *See* 17 CFR 23.154(b)(2) (explaining that IM is equal to the potential future exposure of the uncleared swap or netting portfolio of uncleared swaps covered by an eligible master netting agreement.).

[66] 7 U.S.C. 6s(j)(2).

[67] *See* 17 CFR 23.600.

[68] Letter 19–29 at 4.

report pursuant to Regulation 23.600 would require a CSE to identify any adjustments and enhancements to the amount of IM calculated pursuant to the risk-based model of its swap entity counterparty to ensure the CSE's collection of adequate amounts of IM.

The Commission requests comment regarding the proposed amendment to Commission regulation 23.154(a). The Commission also specifically requests comment on the following questions:

- The proposed amendment to Regulation 23.154(a) would allow a CSE to use the risk-based model calculation of IM of a swap entity counterparty to comply with Regulation 23.154(a)(1), which requires CSEs to calculate IM to be collected from counterparties. The alternative method of IM calculation would be available only with respect to uncleared swaps entered into for the purpose of hedging. Should this restriction be eliminated, narrowed, or expanded? If the restriction should be narrowed or expanded, please describe any appropriate modifications to the restriction. If it should be eliminated, please explain why.
- The proposed amendment to Regulation 23.154(a) intends to provide an alternative method for the calculation of IM for CSEs with highly specialized and discrete swap business models that primarily enter into swaps with non-SDs or MSPs but, enter into offsetting swaps with SDs and MSPs to hedge the risk of such customer-facing swaps, and opt to use the standardized IM table set forth in Commission regulation 23.154(c) rather than adopt and maintain a risk-based model for the calculation of IM. As such, the use of the alternative method of calculation is not expected to be widespread. Is this a reasonable expectation, or would this alternative method of IM calculation be likely to be used by all CSEs or a larger subset of CSEs than anticipated under the proposed rule? If a larger subset, please describe the characteristics of this wider group. Should the availability of this alternative method of IM calculation include all classes of swaps, or only a subset (*e.g.,* commodity swaps)?
- How many CSEs would likely take advantage of this amendment? How many of these CSEs do not trade uncleared swaps currently? How many use the standardized IM table? How many use a model developed by a third-party vendor? How many of the Phase 5 entities are likely to take advantage of this amendment? What might they do for IM calculation absent the amendment? To the extent possible, please provide a basis for these estimates.
- The Commission believes that the requirement to furnish risk exposure reports under Commission regulation 23.600, while not matching exactly all the terms of the CFTC notification required by Letter 19–29, addresses the overall purpose of the requirement. Should the Commission include a more tailored reporting requirement in the proposed amendment?
- Does the proposed amendment to effectively codify Letter 19–29 include sufficient risk management tools in place to guard against any potential conflict of interest arising from the fact that a CSE will rely on its swap entity counterparty's IM calculation to determine the amount of IM to be collected from such counterparty?
- Should the Commission proceed to adopt the proposed amendment to effectively codify Letter 19–29 if the U.S. prudential regulators do not adopt similar regulatory changes? Would this divergence between the CFTC and the prudential regulators' margin requirements for uncleared swaps impact market participants? Is there a potential for industry confusion if that were to be the case?

III. Administrative Compliance

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[69] Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[70] a regulatory flexibility analysis or certification typically is required.[71] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[72] The proposed amendments only affect certain SDs and MSPs and their counterparties, which must be eligible contract participants (''ECPs'').[73] The Commission has previously established that SDs, MSPs and ECPs are not small entities for purposes of the RFA.[74]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[75] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The proposed amendments contain no requirements subject to the PRA.

B. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA.[76] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

The Commission is proposing to amend the CFTC Margin Rule to revise the method for calculating AANA for determining whether an FEU has MSE and the timing for determining whether an FEU has MSE after the end of the phased compliance schedule (''timing of post-phase-in compliance''). These amendments would align the CFTC Margin Rule with the BCBS/IOSCO Framework with respect to these matters.

The Commission is also proposing to amend Commission regulation 23.154(a) along the lines of Letter 19–29, and thus allow CSEs to use the risk-based model calculation of IM of a counterparty that

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[69] 5 U.S.C. 601 *et seq.*

[70] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[71] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[72] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[73] Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an ECP, as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

[74] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' '' 'Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[75] 44 U.S.C. 3501 *et seq.*

[76] 7 U.S.C. 19(a).

is a swap entity.[77] The proposed rule would make this accommodation available only with respect to uncleared swaps entered into for the purpose of hedging swap risk.

The baseline against which the benefits and costs associated with the proposed amendments are compared is the uncleared swaps markets as they exist today and the currently applicable timing for compliance with the IM requirements after the expiration of the phased compliance schedule. Concerning the amendment of Commission regulation 23.154(a), the Commission believes that to the extent market participants may have relied on Letter 19–29, the actual costs and benefits of the proposed amendment, as realized by the market, may not be as significant at a practical level. With respect to the proposed amendment to align aspects of the CFTC Margin Rule with the BCBS/IOSCO Framework, the Commission acknowledges that the Dodd-Frank Act calls on the CFTC to ''consult and coordinate on the establishment of consistent international standards'' with respect to the regulation of swaps.[78] The proposed rule therefore would advance the Congressional mandate to harmonize the CFTC's requirements with international standards, thereby removing a regulatory impediment that might hinder the competitiveness of the U.S. swaps industry.[79]

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of these proposed amendments on all activity subject to the proposed amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, U.S. commerce under section 2(i) of the CEA.[80]

1. Benefits

By harmonizing the method for calculating AANA for determining MSE and the timing of post-phase-in compliance with the BCBS/IOSCO Framework, the proposed amendment would create a benefit because it would reduce complexity—for example, the proposed AANA month-end calculation would require consideration of only three observation dates rather than daily AANAs over the three-month calculation period—and the potential for confusion in the application of the margin requirements. Firms would no longer need to undertake separate AANA calculations using different calculation periods, nor would they need to conform to two separate compliance timings, varying according to the location of their swap counterparties and jurisdictional requirements applicable to the counterparties.

The proposed amendment would impact FEUs with average AANA between $8 billion and $50 billion (Phase 6 entities) that come into the scope of compliance with the IM requirements under the CFTC Margin Rule in the last compliance phase beginning on September 1, 2021, as well as those entities that come into scope after the end of the last compliance phase. The Commission believes that the proposed amendment would benefit these entities, which, given their level of swap activity, pose a lower risk to the uncleared swaps market and the U.S financial system in general than entities who came into scope in earlier phases. The OCE has estimated that there are approximately 514 of such entities representing 4% of total AANA across all phases.[81] This means that the proposed amendment addresses entities that tend to engage in less uncleared swap trading activity and, and in the aggregate, pose less systemic risk than entities in previous phases. Because these entities are smaller, they presumably have fewer resources to devote to IM compliance and hence would benefit from the alignment of the method of calculation of AANA across jurisdictions without contributing substantially to systemic risk.

For Phase 6 entities with average AANA between $8 billion and $50 billion that will begin collecting initial margin on September 1, 2021, moving the calculation period from June, July, and August 2020 to March, April, and May 2021 would better align with current practices. While the Commission cannot anticipate exactly how the second quarter of 2021 will differ from the third quarter of 2020, based on comparable past experience, the OCE estimates that approximately 75–100 entities would come into scope, and a similar number would fall below the threshold by virtue of moving the calculation period. The adjusted calculation period would reduce the regulatory burden for firms that have reduced their MSE below the $8 billion threshold while requiring the collection of margin for those firms that have increased their swaps business above the threshold. While aggregate AANA for firms that fall into or out of scope is small relative to the overall market (less than one percent of total aggregate AANA), moving the calculation period close to the compliance date may have a significant impact on the entities that have reduced their MSE.

The Commission also notes that the benefits of alignment with the BCBS/IOSCO Framework will continue to accrue in future years, as the determination of MSE for an FEU under the CFTC Margin Rule is an annual undertaking, triggered by the entry into an uncleared swap between the FEU and a CSE counterparty and the need to determine whether the FEU has MSE, which triggers the application of the IM requirements and the exchange of regulatory IM between a CSE and a FEU for their uncleared swap transactions.

With respect to the amendment of Commission regulation 23.154(a), the Commission believes that the uncleared swap markets would benefit from the extension of the targeted relief provided to Cargill, the requester in Letter 19–29, to a wider group of CSEs with similar unique swap business models. In taking a no-action position, DSIO took account of Cargill's representation that its swap trading activity primarily involved physical agricultural commodities and certain other asset classes and that it ''may maintain positions that require collection of IM from SDs.'' Cargill

[77] For the definition of the term ''swap entity,'' *see supra* note 34.

[78] *See supra* note 42.

[79] A starting point in determining the potential benefit of alignment with the BCBS/IOSCO Framework is various statutory provisions where the U.S. Congress has called on the CFTC and other financial regulators to align U.S. regulatory requirements with international standards. For example, the Commodity Futures Modernization Act of 2000 (''CFMA'') focused on the potential threat to competitiveness for U.S. industry where there is divergence with international standards. In particular, section 126 of the CFMA provides that regulatory impediments to the operation of global business interests can compromise the competitiveness of United States businesses. *See* CFMA section 126(a), Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[80] 7 U.S.C. 2(i).

[81] Using March–May of 2020 as the calculation period. The methodology for calculating AANA is described in Richard Haynes, Madison Lau, & Bruce Tuckman, *Initial Margin Phase 5,* at 4 (Oct. 24, 2018), *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.*

further stated that given the highly specialized and discrete nature of its swap business, risk-based modeling would impose a disproportionate burden.

The more widespread availability of the alternative method of calculation of IM provided by regulation 23.154(a), as proposed to be amended, may incentivize some market participants to expand their swap business. In particular, given that certain market participants would have the option to forgo the cost of risk-based modeling, this potential reduction in compliance costs may encourage certain entities to increase their swaps trading. This may be especially true after September 1, 2021, as a large number of entities will be newly-subject to mandatory margin.[82] By increasing the pool of potential swap counterparties, the proposed amendment could enhance competition, increase overall liquidity, and facilitate price discovery in the uncleared swaps markets.

2. Costs

While the proposed changes to the CFTC Margin Rule would have the effect of creating efficiencies for market participants, the Commission acknowledges that the changes would also result in some costs. Among other things, the proposed revision of the AANA calculation period for determining MSE to align it with the BCBS/IOSCO AANA calculation period would reduce the time frame for determining whether an FEU is subject to the IM requirements and for preparing for compliance with the requirements during the final phase-in period of 2021.

Under the current margin requirements, in the period leading to the final phase-in date of September 1, 2021, FEUs would have a full year to prepare, as MSE for an FEU would be determined by using the AANA for June, July and August of the prior year. However, the proposed amendment to the period of calculation of AANA for determining MSE would result in entities only having a three-month advance notice in 2021, as AANA would be calculated using the March, April and May period of that year. Entities would have a shorter time frame to engage in preparations to comply with IM requirements, including, among other things, procuring rule-compliant documentation, establishing processes for the exchange of regulatory IM, and setting up IM custodial arrangements. Because the proposed amendment would align the AANA calculation for determining MSE with BCBS/IOSCO's AANA calculation and the compliance date would remain unchanged, the Commission believes that the cost would be mitigated. In particular, the Commission notes market participants' statements indicating that the differences in the U.S. regulations could create complexity and confusion and lead to additional effort, cost and compliance challenges for smaller market participants that are generally subject to margin requirements in multiple global jurisdictions.[83]

The Commission further notes that the proposed amendment to the timing of post-phase-in compliance would defer compliance with the IM requirements with respect to uncleared swaps entered into by a CSE with an FEU that comes into the scope of IM compliance after the end of the last compliance phase. Under the current rule, FEUs with MSE as measured in June, July, and August 2021 would come into the scope of compliance post-phase-in beginning on January 1, 2022. On the other hand, under the proposed amendment, FEUs with MSE as measured in March, April, and May 2022 would be subject to compliance beginning on September 1, 2022. As a result, for FEUs with MSE in both periods, less collateral for uncleared swaps may be collected between January 1, 2022, and September 1, 2022, rendering uncleared swap positions entered into during the nine-month period riskier, which could increase the risk of contagion and the potential for systemic risk. Conversely, under the proposed amendment, a CSE would be required to exchange IM with a previously in-scope FEU that fell below the MSE level by January 1, 2022, for nine months longer than the otherwise required.

With respect to changing the daily AANA calculation method to a month-end calculation method for determining MSE, the Commission acknowledges that there are potential costs. The utilization of a month-end calculation method could result in an AANA calculation that is not representative of a market participant's participation in the swaps markets. As previously discussed, the proposed AANA month-end calculation may result in the exclusion or undercounting of certain financial contracts that are required to be included in the calculation (*e.g.,* uncleared swaps, uncleared security-based swaps, foreign exchange forwards, or foreign exchange swaps) because of certain combinations of tenure and time of execution, such as those often present in some intra-month natural gas and electricity swaps.[84] The Commission also notes the potential that market participants might ''window dress'' their exposures to avoid MSE status and compliance with the CFTC's margin requirements. At the same time, it is possible that the month-end methodology, which uses only three data points, could result in some entities having an AANA calculation on the three end-of-month dates that is uncharacteristically high relative to their typical positions.

If products are excluded from the AANA calculation, or if exposures are ''window dressed,'' the month-end calculation may have the effect of deferring the time by which market participants meet the MSE classification resulting in additional swaps between market participants and CSEs being deemed legacy swaps that are not subject to the IM requirements.[85] This may increase the level of counterparty credit risk to the financial system. While potentially meaningful, this risk would be mitigated because the legacy swap portfolios would be entered into with FEUs that engage in lower levels of notional trading.

Finally, given the possibility that the U.S. prudential regulators may not adopt the changes to the method of calculation of AANA proposed in this rulemaking, there is the potential that firms that engage in swaps transactions with both CSEs and swaps dealers subject to the margin requirements of the U.S. prudential regulators may incur additional costs by continuing to have to undertake their AANA calculations under two different methods of calculation.

However, the Commission preliminarily is of the view that the benefits of aligning with the BCBS/IOSCO Framework outweigh these potential costs. In this regard, in the aforementioned OCE exercise utilizing a sample of days, the OCE estimated that calculations based on end-of-month

[82] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 41346 (July 10, 2020).

[83] Margin Subcommittee Report at 49.

[84] *See supra* note 49.

[85] Pursuant to Commission regulation 23.161, the compliance dates for the IM and VM requirements under the CFTC Margin Rule are staggered across a phased schedule that extends from September 1, 2016, to September 1, 2021. The compliance period for the VM requirements ended on March 1, 2017 (though the CFTC and other regulators provided guidance permitting a six-month grace period to implement the requirements following the implementation date), while the IM requirements continue to phase in through September 1, 2021. An uncleared swap entered into prior to an entity's IM compliance date is a ''legacy swap'' that is not subject to IM requirements. *See* CFTC Margin Rule, 81 FR at 651 and Commission regulation 23.161. 17 CFR 23.161.

AANA would yield fairly similar results as the calculations based on the current daily AANA approach (setting aside the window dressing issue). Based on 2020 swap data, the OCE estimated that approximately 492 entities of 514 entities that would come into scope during Phase 6 based on the current methodology would also come into scope based on the proposed methodology. Put differently, all but 22 of the entities that are above MSE under the current methodology would also be above MSE under the proposed methodology. In addition, there are 20 entities that would be in scope under the proposed methodology, but would not be under the current methodology, so that the aggregate number of Phase 6 entities differs only by two. In aggregate, the two methodologies would capture quite similar sets of entities. In addition, the entities that fall out of scope when one changes methodology tend to be among the smallest of the Phase 6 entities. That is, entities that are in-scope under the current methodology but not the proposed methodology average $6.95 billion in AANA, compared to $20 billion for all Phase 6 entities.[86]

Taking account of the small number of FEUs that would therefore have MSE and thus be subject to the Commission's IM requirements, the Commission believes that the potential exclusion of certain financial products in determining MSE would have a limited impact on the effectiveness of the CFTC Margin Rule. In addition, with respect to the potential that a market participant might ''window dress'' its exposure, the Commission has sufficient regulatory authority, including anti-fraud powers under section 4b of the CEA,[87] to take appropriate enforcement actions against any market participant that may engage in deceptive conduct with respect to the AANA calculation, and CSEs must also have written policies and procedures in place to prevent evasion or the facilitation of an evasion by an FEU counterparty.[88]

Roughly 514 entities, as estimated by the OCE, would come into the scope of the IM requirements beginning on September 1, 2021, and would be affected by the foregoing proposed amendments. In advance of the September 1, 2021 compliance date, many of these entities may engage in planning and preparations relating to the exchange of regulatory IM. With the revision of the AANA method of calculation, these entities may need to adjust their systems to reflect changes in the calculation and update related financial infrastructure arrangements. While requesting comments on this issue, the Commission believes that the cost of shifting the MSE calculation period to the new time frame would be negligible, and the adoption of the month-end AANA calculation method would likely be cost-reducing for impacted firms.

Regarding the amendment of Commission regulation 23.154(a), there may be associated costs, as CSEs would be allowed to rely on the risk-based model calculation of IM computed by a swap entity counterparty. Specifically, the safeguard of requiring both the CSE and its SD counterparty to maintain a margin model for any swap transaction that does not utilize the table-based method would be eliminated. A CSE that relies on a counterparty's risk-based model calculations would thus avoid rigorous Commission requirements relating to risk-based modeling,[89] which may undercut the effectiveness of the CSE's risk oversight.[90]

In addition, the safeguard of private market discipline that is inherent in having each counterparty develop its own IM model, and therefore the ability for the parties to scrutinize each other's IM model and output, will not be present given that under the proposed rule, a CSE would be permitted to rely on the risk-based model calculation of a swap entity counterparty. As a result, there is the potential that insufficient amounts of IM would be generated by the swap entity counterparty, which may be attributable to a deficiency in the model or the fact that the swap entity may be inherently conflicted and interested in generating lower amounts of IM collectable by the CSE.[91] Given that the CSE without a model may lack adequate means to verify the amount of IM produced by the swap entity counterparty, the CSE may not be capable to contest it. As a result, insufficient amounts of IM may be collected by the CSE to protect itself against the risk of default by the swap entity counterparty, increasing the risk of contagion and the potential for systemic risk.

The Commission, however, believes that these costs are mitigated by the proposed rule, which would be narrowly tailored to make available the alternative method of IM calculation set forth in Letter 19–29 only with respect to uncleared swaps entered into for the purpose of hedging. In addition, the Commission notes that there are other requirements in the Commission's regulations that address the monitoring of exposures and swap risk.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of the proposal pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

The proposed rule would align the CFTC Margin Rule's method for calculating AANA for determining MSE and the timing of post-phase-in compliance with the BCBS/IOSCO Framework. By aligning these requirements with the international standard, the proposed rule would reduce the potential for complexity and confusion that can result from using different AANA calculation methods and different compliance schedules for market participants that may be subject to margin requirements in multiple jurisdictions. At the same time, the Commission recognizes that some firms may have already begun preparations to undertake AANA calculations under the existing requirements. The proposed rule may require them to adjust their calculations to reflect the new proposed method for calculating AANA for determining MSE and to update infrastructure arrangements, increasing the overall cost of compliance with the margin requirements.

Under the existing CFTC Margin Rule, firms that are FEUs, beginning in Phase 6, which starts on September 1, 2021, would look back to the 2020 June–August period to determine whether they have MSE. As such, the firms would have no less than twelve months to engage in preparations for the exchange of regulatory IM, by, among other things, procuring rule-compliant documentation, establishing processes and systems for the calculation, collection and posting of IM collateral, and setting up custodial arrangements. If the Commission determines to adopt the proposed amendment changing the AANA calculation period for determining MSE to March–May of the current year, such firms would have only a three-month window to engage in preparations to exchange IM. Nevertheless, the Commission notes that, under the existing requirements,

[86] *See supra* note 50.

[87] 7 U.S.C. 6b.

[88] *See* 17 CFR 23.402(a)(ii).

[89] *See generally* 17 CFR 23.154(b).

[90] *But cf.* 17 CFR 23.600 (requiring SDs and MSP to establish a robust risk management program for the monitoring and management of their swaps activities).

[91] *But cf.* 17 CFR 23.600 (requiring swap entities to have a risk management program for the management and monitoring of risk associated with their swaps, which may reduce the risk that such entities may act in a conflicted manner).

after the end of the phased compliance schedule, firms would only have four months in subsequent years since the calculation period for determining MSE status would be June through August of the prior year, with compliance starting January 1 of the following year. In addition, because the proposed amendment would require only averaging three month-end dates rather than averaging all business days during the three-month calculation period, the potential burdens of a shorter preparatory period for Phase 6 entities may be offset by the adoption of the BCBS/IOSCO Framework's less onerous calculation method.

Moreover, the proposed amendment would shift the timing of post-phase-in compliance to September 1 of each year. As such, entities that otherwise would be required to exchange IM beginning January 1, 2022, would be able to defer compliance to September 1, 2022.[92] As a result, less collateral for uncleared swaps may be collected between January 1, 2022, and September 1, 2022, rendering the parties' positions riskier during that nine-month period, which could raise the risk of contagion and increase the potential for systemic risk. Firms that would have fallen out of scope by January 1, 2022 would also be subject to compliance for an additional nine months.

Notwithstanding these potential costs, the Commission believes that the proposed changes advance the Commission's goal, pursuant to statutory direction, of coordination and harmonization with international regulators. The costs that may arise as a result of the proposed changes, as discussed above, would be mitigated by the overall cost savings, as the need to undertake separate calculations of MSE to address different requirements in different jurisdictions would be obviated with respect to most jurisdictions.

The amendment of Commission regulation 23.154(a) would allow a CSE to use the risk-based model calculation of IM of a counterparty that is a swap entity. Without an alternative model, the CSE may not be able to challenge the amounts generated by the swap entity counterparty, which may be insufficient because of model error or malfunction or because the swap entity may be inherently conflicted and may be interested in generating low amounts of IM collectable by the CSE. In turn, insufficient amounts of IM may be collected by the CSE to offset the risk of counterparty default, increasing the risk of contagion and the potential for systemic risk.

The Commission believes that these risks would be mitigated by the proposed rule, which would be narrowly tailored to permit reliance on a swap entity counterparty's risk-based model calculation only with respect to uncleared swaps entered into for the purpose of hedging. In addition, there are other requirements in the Commission's regulations that address the monitoring of exposures and swap risk (*i.e.,* Commission regulation 23.600, which requires SDs and MSPs to adopt a robust risk management program for the monitoring and management of risk related to their swap activities).

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The proposed rule would align the CFTC Margin Rule's AANA calculation method for determining MSE and the timing of post-phase-in compliance with the BCBS/IOSCO Framework. As such, the proposed rule would reduce the need, at least for entities not also undertaking swaps with U.S. prudentially regulated SDs, to undertake separate AANA calculations accounting for different calculation methods and to conform to separate compliance timings, varying according to the location of swap counterparties and jurisdictional requirements applicable to the counterparties. As such, the proposed changes would promote market efficiency and would even the playing field for market players, fostering competitiveness and reducing the incentive to engage in regulatory arbitrage by identifying more accommodating margin frameworks.

The amendment of Commission regulation 23.154(a) would allow CSEs to rely on a swap entity counterparty's IM risk-based model calculations. Without a model, the CSE would lack effective means to verify its counterparty's IM calculations. As a result, if there are shortfalls in the output, the CSE may collect less IM collateral to offset the risk of default by the counterparty, which could increase the risk of contagion, threatening the integrity of the U.S. financial markets. The Commission, however, believes that the proposed rule is sufficiently targeted to mitigate these risks. The proposed amendment would apply only when uncleared swaps are entered into for hedging, thus limiting widespread use and the potential for uncollateralized uncleared swap risk.

In addition, by providing an alternative to risk-based modeling and the associated costs, the proposed rule could encourage some market participants to expand their swap business. The proposed amendment would thus promote efficiency in the uncleared swaps market by increasing the pool of swap counterparties and fostering competition. On the other hand, the availability of an alternative less costly method of IM calculation may encourage entities to shift their trading to uncleared swaps from swaps that can be cleared, potentially reducing liquidity in the cleared swap markets.

(c) Price Discovery

By aligning the CFTC Margin Rule and the BCBS/IOSCO Framework with respect to the AANA calculation method for determining MSE and post-phase-in compliance timing, the proposed rule would reduce the burden and confusion inherent in implementing separate measures and processes to address compliance in different jurisdictions. The proposed rule could thus incentivize more firms to enter into uncleared swap transactions, which would increase liquidity and lead to more robust pricing that reflects market fundamentals.

By amending Commission regulation 23.154(a), the Commission would relieve certain CSEs from having to adopt a risk-based margin model to calculate IM or use the standardized IM table. Being able to rely on a counterparty's risk-based model calculation of IM may encourage entities to increase trading in uncleared swaps. As a result, firms may take a more active role in the uncleared swap markets, which would lead to increase liquidity and enhance price discovery. On the other hand, the proposed amendment may encourage entities to shift their trading from swaps that can be cleared, potentially reducing liquidity and price discovery in those markets.

(d) Sound Risk Management

The proposed rule would reduce the need for firms to undertake separate AANA calculations using different methods and to conform to separate compliance timing, allowing firms to engage in sound risk management by focusing on more substantive requirements.

Under the current rule, after the last phase of compliance, FEUs would be subject to IM compliance beginning on

[92] This would apply to entities that meet the MSE level based on their AANA during the June, July, and August 2021 period, and continue to have MSE in the March, April, and May 2022 period. Of course, changing the calculation period to the March, April, and May 2022 period may lead to the inclusion of entities whose AANA is below MSE in the June, July, and August 2021 period, but rises to the MSE level or above by the March, April, and May 2022 period. The OCE estimated that approximately 75–100 entities typically move from one side of the MSE threshold to the other between measurement periods.

January 1, 2022. The proposed rule would defer such compliance until September 1, 2022. Uncleared swaps entered between January 1, 2022, and September 1, 2022, may be uncollateralized. As such, less collateral may be collected, and positions created during that nine-month period may be riskier, increasing the risk of contagion and systemic risk. The Commission notes, however, that keeping the January 1, 2022 compliance date could likewise result in the collection of less collateral. Some FEUs, after coming into scope during the last phase of compliance, may exit MSE status on January 1, 2022, as their AANA during the relevant calculation period may decline below the MSE threshold, and CSEs entering into uncleared swaps with these FEUs would no longer be required to exchange IM with the FEUs.

Also, it is possible that under the proposed month-end method for calculating AANA to determine MSE, FEUs trading certain financial products may avoid MSE status, as month-end calculations may not capture certain financial products that are required to be included in the calculation. As result, CSEs transactions with such FEUs would not be subject to the IM requirements and may be insufficiently collateralized, increasing the risk of contagion and systemic risk. Conversely, because more than 96% of FEUs are unlikely to have MSE, as estimated by the OCE, and come within the scope of the IM requirements, the exclusion of such products would have a limited impact on the effectiveness of the Commission's IM requirements.

Moreover, month-end AANA calculations compared to daily AANA calculations may be more susceptible to ''window dressing'' and less conducive to sound risk management. FEUs may manage their exposures as they approach the month-end date during the three month calculation period to avoid MSE status. The Commission, however, notes that it has sufficient regulatory authority, including anti-fraud powers under section 4b of the CEA, to take appropriate enforcement actions against any market participant that may engage in deceptive conduct with respect to the AANA calculation, and CSEs must also have written policies and procedures in place to prevent evasion or the facilitation of an evasion by an FEU counterparty.

By allowing CSEs to use the risk-based model calculation of a swap entity counterparty consistent with Letter 19–29, CSEs may no longer be incentivized to adopt their own risk-based models. If a CSE uses a counterparty's IM model calculation without developing its own model, the CSE may lack reasonable means to verify the IM provided by its counterparty, recognize shortfalls in the IM calculation, and identify potential flaws in the swap entity counterparty's risk-based model. As a result, insufficient amounts of IM may be collected by the CSE to protect itself against the risk of default by the swap entity counterparty, increasing the risk of contagion and the potential for systemic risk. The Commission, however, believes that these risks are mitigated because, under the proposed amendment, CSEs would be able to use a counterparty's risk-based model IM calculation only with respect to uncleared swaps entered into for the purpose of hedging. In addition, the Commission notes that there are other requirements in the Commission's regulations that address the monitoring of exposures and swap risk.

(e) Other Public Interest Considerations

The Commission believes that the proposed amendments to align the CFTC Margin Rule with the BCBS/IOSCO Framework would promote harmonization with international regulatory requirements and would reduce the potential for regulatory arbitrage. However, given that the U.S. prudential regulators may not amend their margin requirements in line with the proposed amendments, the possibility exists that the CFTC and U.S. prudential regulators' differing rules may induce certain firms to undertake swaps with particular SDs based on which U.S. regulatory agency is responsible for setting margin requirements for such SDs.

Request for Comments on Cost-Benefit Considerations. The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information they may have quantifying or qualifying the costs and benefits of the proposed amendments.

C. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.[93]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed amendments implicate any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed amendments to determine whether they are anticompetitive, and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether these rule proposals are anticompetitive and, if they are, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed amendments are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less competitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed amendments.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.151, revise the definition of ''Material swaps exposure'' to read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Material swaps exposure for an entity means that, as of September 1 of any year, the entity and its margin affiliates have an average month-end aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign

[93] 7 U.S.C. 19(b).

exchange swaps with all counterparties for March, April, and May of that year that exceeds $8 billion, where such amount is calculated only for the last business day of the month. An entity shall count the average month-end aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time. For purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that qualifies for an exemption under section 3C(g)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations or that satisfies the criteria in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78–c3(g)(4)) and implementing regulations.

* * * * *

■ 3. In § 23.154, add paragraph (a)(5) to read as follows:

§ 23.154 Calculation of initial margin.

(a) * * *

(5) A covered swap entity would be deemed to calculate initial margin as required by paragraph (a)(1) of this section if it uses the amount of initial margin calculated by a counterparty that is a swap entity and the initial margin amount is calculated using the swap entity's risk-based model that meets the requirements of paragraph (b) of this section or is approved by a prudential regulator, provided that initial margin calculated in such manner is used only with respect to uncleared swaps entered into by the covered swap entity and the swap entity for the purpose of hedging the covered swap entity's swaps with non-swap entity counterparties.

* * * * *

Issued in Washington, DC, on August 17, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Commissioner Dawn D. Stump

Overview

I am pleased to support the proposed rulemaking that the Commission is issuing with respect to the definition of ''material swap exposure'' and an alternative margin calculation method in connection with the Commission's margin requirements for uncleared swaps.

This proposed rulemaking addresses recommendations that the Commission has received from its Global Markets Advisory Committee (''GMAC''), which I am proud to sponsor, and is based on a comprehensive report prepared by GMAC's Subcommittee on Margin Requirements for Non-Cleared Swaps (''GMAC Margin Subcommittee'').[1] It demonstrates the value added to the Commission's policymaking by its Advisory Committees, in which market participants and other interested parties come together to provide us with their perspectives and potential solutions to practical problems.

The proposed rulemaking contains two proposals, which have much to commend them. These proposals further objectives that I have commented on before:

- The imperative of harmonizing our margin requirements with those of our international colleagues around the world in order to facilitate compliance and coordinated regulatory oversight; and
- the benefits of codifying relief that has been issued by our Staff and re-visiting our rules, where appropriate.

I am very appreciative of the many people whose efforts have contributed to bringing this proposed rulemaking to fruition. First, the members of the GMAC, and especially the GMAC Margin Subcommittee, who devoted a tremendous amount of time to quickly provide us with a high-quality report on complex margin issues at the same time they were performing their ''day jobs'' during a global pandemic. Second, Chairman Tarbert, for his willingness to include this proposed rulemaking on the busy agenda that he has laid out for the Commission for the rest of this year. Third, my fellow Commissioners, for working with me on these important issues. And finally, the Staff of the Division of Swap Dealer and Intermediary Oversight (''DSIO''), whose tireless efforts have enabled us to advance these initiatives to assure that our uncleared margin rules are workable for all and are in line with international standards, thereby enhancing compliance consistent with our responsibilities under the Commodity Exchange Act (''CEA'').

Background: A Different Universe Is Coming Into Scope of the Uncleared Margin Rules

The Commission's uncleared margin rules for swap dealers, like the Framework of the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (''BCBS/IOSCO'')[2] on which they are based, were designed primarily to ensure the exchange of margin between the largest financial institutions for their uncleared swap transactions with one another. These institutions and transactions are already subject to uncleared margin requirements.

Pursuant to the phased implementation schedule of the Commission's rules and the BCBS/IOSCO Framework, though, a different universe of market participants—presenting unique considerations—is coming into scope of the margin rules. It is only now, as we enter into the final phases of the implementation schedule, that the Commission's uncleared margin rules will apply to a significant number of financial end-users, and we have a responsibility to make sure they are fit for that purpose. Accordingly, now is the time we must explore whether the regulatory parameters that we have applied to the largest financial institutions in the earlier phases of margin implementation need to be tailored to account for the practical operational challenges posed by the exchange of margin when one of the counterparties is a pension plan, endowment, insurance provider, mortgage service provider, or other financial end-user.

International Harmonization To Enhance Compliance and Coordinated Regulation

The first proposal in this proposed rulemaking would revise the calculation method for determining whether financial end-users come within the scope of the initial margin (''IM'') requirements, and the timing for compliance with the IM requirements after the end of the phased compliance schedule. These changes would align certain timing and calculation issues under the Commission's margin rules with both the BCBS/IOSCO Framework and the manner in which these issues are handled by our regulatory colleagues in all other major market jurisdictions.

Swap dealers must exchange IM with respect to uncleared swaps that they enter into with a financial end-user counterparty that has ''material swap exposure'' (''MSE''). The Commission's margin rules provide that after the last phase of compliance, MSE is to be determined on *January 1,* and that an entity has MSE if it has more than $8 billion in average aggregate notional amount (''AANA'') during *June, July, and August* of *the prior year.* By contrast, under the BCBS/IOSCO Framework and in virtually every other country in the world, an entity is determined to come into scope of the IM requirement on *September 1,* and an entity has MSE if it has the equivalent of $8 billion in AANA[3] during *March, April, and May* of *that year.*

The reason the United States is out-of-step with the rest of the world on these timing and calculation issues is not because of any

[1] *Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (April 2020), available at *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[2] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf.*

[3] The MSE threshold under the BCBS/IOSCO Framework is stated in euros rather than dollars.

considered policy determination. Rather, it is simply the result of a quirk that the margin rules were adopted based on the BCBS/IOSCO Framework that was in effect at the time—but the BCBS/IOSCO Framework was revised two years later.

In a further disconnect, the Commission's margin rules look to the *daily average* AANA during the three-month calculation period for determining MSE, whereas the BCBS/IOSCO Framework and other major market jurisdictions base the AANA calculation on an *average of month-end dates* during that period. Yet, the proposing release notes that the Commission's Office of the Chief Economist has estimated that calculations based on end-of-month AANA generally would yield similar results as calculations based on the Commission's current daily AANA approach.

The Commission is proposing to amend these timing and calculation provisions of its uncleared margin rules to harmonize them with the BCBS/IOSCO Framework and the approach followed by our international colleagues around the world. Given the global nature of the derivatives markets, we should always seek international harmonization of our regulations unless a compelling reason exists not to do so—which is not the case here.

Indeed, in the Dodd-Frank Act, Congress specifically directed the Commission, ''[i]n order to promote effective and consistent global regulation of swaps,'' to ''consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation . . . of swaps [and] swap entities . . .'' [4] And when the G–20 leaders met in Pittsburgh in the midst of the financial crisis in 2009, they, too, recognized that a workable solution for global derivatives markets demands coordinated policies and cooperation.[5]

The MSE proposal being issued today is true to the direction of Congress in the Dodd-Frank Act, and honors the commitment of the G–20 leaders at the Pittsburgh summit. Differences between countries in the detailed timing and calculation requirements with respect to uncleared margin compel participants in these global markets to run multiple compliance calculations—for no particular regulatory reason. This not only forces market participants to bear unnecessary costs, but actually hinders compliance with margin requirements because of the entirely foreseeable prospect of calculation errors in applying the different rules.

As noted above, now is the time to address this disjunction in MSE timing and calculation requirements because the financial end-users to which the MSE definition applies are coming into scope of the margin rules. Both Congress and the G–20 leaders recognized that because modern swap markets are not bound by jurisdictional borders, they cannot function absent consistent international standards. Harmonization fosters both improved compliance and effectively regulated markets through coordinated oversight—which must always be our goals.

During the unfortunate events of the financial crisis, we learned that coordination among global regulators, working towards a common objective, is essential. That lesson remains true today, and we are reminded that disregarding this reality has the potential to weaken, rather than strengthen, the effectiveness of our oversight and the resilience of global derivatives markets.

The Benefits of Codifying Staff Relief and Re-Visiting Our Rules

The second proposal in the proposed rulemaking would codify existing DSIO no-action relief in recognition of market realities. Our Staff often has occasion to issue relief or take other action in the form of no-action letters, interpretative letters, or advisories on various issues and in various circumstances. This affords the Commission a chance to observe how the Staff action operates in real-time, and to evaluate lessons learned. With the benefit of this time and experience, the Commission should then consider whether codifying such staff action into rules is appropriate.[6] As I have said before, ''[i]t is simply good government to re-visit our rules and assess whether certain rules need to be updated, evaluate whether rules are achieving their objectives, and identify rules that are falling short and should be withdrawn or improved.'' [7]

The proposal we are issuing today would codify the alternative IM calculation method set out in DSIO no-action Letter No. 19–29.[8] It would provide that a swap dealer may use the risk-based model calculation of IM of a counterparty that is a CFTC-registered swap dealer as the amount of IM that the former must collect from the latter. The proposing release states the Commission's expectation that the proposal generally would be used by swap dealers with a discrete and limited swap business consisting primarily of entering into uncleared swaps with end-user counterparties and then hedging the risk of those swaps with uncleared swaps entered into with a few swap dealers.

This proposal is subject to conditions that: (1) The applicable risk-based model be approved by either the Commission, the National Futures Association, or a prudential regulator; and (2) the uncleared swaps for which a swap dealer uses the risk-based model calculation of IM of its swap dealer counterparty are entered into for the purpose of hedging the former's own risk from entering into swaps with non-swap dealer counterparties.

Simply put, not all swap dealers are created equal. It is therefore appropriate to tailor our uncleared margin regime accordingly. Letter No. 19–29 recognized this reality and smoothed the rough edges of our otherwise one-size-fits-all uncleared margin rules, and I support the proposal to codify that result.

There Remains Unfinished Business

The report of the GMAC Margin Subcommittee recommended several actions beyond those contained in this proposed rulemaking in order to address the unique challenges associated with the application of uncleared margin requirements to end-users. Having been present for the development of the Dodd-Frank Act, I recall the concerns expressed by many lawmakers about applying the new requirements to end-users. The practical challenges with respect to uncleared margin that caused uneasiness back in 2009–2010 are now much more immediate as the margin requirements are being phased in to apply to these end-users.

So, while I am pleased at the steps the Commission is taking in this proposed rulemaking, I hope that we can continue to work together to address the other recommendations included in the GMAC Margin Subcommittee's report. The need to do so will only become more urgent as time marches on.

Conclusion

To be clear, these proposals to amend the Commission's uncleared margin rules are not a ''roll-back'' of the margin requirements that apply today to the largest financial institutions in their swap transactions with one another. Rather, the proposals reflect a thoughtful refinement of our rules to align them with the rest of the international regulatory community, and to take account of specific circumstances in which they impose substantial operational challenges (*i.e.,* they are not workable) when applied to other market participants that are coming within the scope of their mandates. I look forward to receiving public input on any improvements that can be made to the proposals to further enhance compliance with the Commission's uncleared margin requirements.

[4] *See* section 752(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[5] *See* Leaders' Statement from the 2009 G–20 Summit in Pittsburgh, Pa. at 7 (September 24–25, 2009) (''We are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage''), available at *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[6] *See* comments of Commissioner Dawn D. Stump during Open Commission Meeting on January 30, 2020, at 183 (noting that after several years of no-action relief regarding trading on swap execution facilities (''SEFs''), ''we have the benefit of time and experience and it is time to think about codifying some of that relief. . . . [T]he SEFs, the market participants, and the Commission have benefited from this time and we have an obligation to provide more legal certainty through codifying these provisions into rules.''), available at *https://www.cftc.gov/sites/default/files/2020/08/1597339661/openmeeting_013020_Transcript.pdf.*

[7] Statement of Commissioner Dawn D. Stump for CFTC Open Meeting on: (1) Final Rule on Position Limits and Position Accountability for Security Futures Products; and (2) Proposed Rule on Public Rulemaking Procedures (Part 13 Amendments) (September 16, 2019), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement091619.*

[8] CFTC Letter No. 19–29, Request for No-Action Relief Concerning Calculation of Initial Margin (December 19, 2019), available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=&field_csl_letter_types_target_id%5B%5D=636&field_csl_divisions_target_id%5B%5D=596&field_csl_letter_year_value=2019&=Apply.*

Appendix 3—Statement of Commissioner Dan M. Berkovitz

I support issuing for public comments two notices of proposed rulemaking to improve the operation of the CFTC's Margin Rule.[1] The Margin Rule requires certain swap dealers (''SDs'') and major swap participants (''MSPs'') to post and collect initial and variation margin for uncleared swaps.[2] The Margin Rule is critical to mitigating risks in the financial system that might otherwise arise from uncleared swaps. I support a strong Margin Rule, and I look forward to public comments on the proposals, including whether certain elements of the proposals could increase risk to the financial system and how the final rule should address such risks.

The proposals address: (1) The definition of material swap exposure (''MSE'') and an alternative method for calculating initial margin (''the MSE and Initial Margin Proposal''); and (2) the application of the minimum transfer amount (''MTA'') for initial and variation margin (''the MTA Proposal''). They build on frameworks developed by the Basel Committee on Banking Supervision and International Organization of Securities Commissions (''BCBS/IOSCO''),[3] existing CFTC staff no-action letters, and recommendations made to the CFTC's Global Markets Advisory Committee (''GMAC'').[4] I thank Commissioner Stump for her leadership of the GMAC and her work to bring these issues forward for the Commission's consideration.

Today's proposed amendments to the Margin Rule could help promote liquidity and competition in swaps markets by allowing the counterparties of certain end-users to rely on the initial margin calculations of the more sophisticated SDs with whom they enter into transactions designed to manage their risks, subject to safeguards. They would also address practical challenges in the Commission's MTA rules that arise when an entity such as a pension plan or endowment retains asset managers to invest multiple separately managed accounts (''SMAs''). Similar operational issues are addressed with respect to initial and variation margin MTA calculations.

These operational and other benefits justify publishing the MSE and Initial Margin Proposal and the MTA Proposal in the **Federal Register** for public comment. However, I am concerned that specific aspects of each of these proposed rules could weaken the Margin Rule and increase risk by creating a potentially larger pool of uncollateralized, uncleared swaps exposure. My support for finalizing these proposals will depend on how the potential increased risks are addressed.

One potential risk in the MSE and Initial Margin Proposal arises from amending the definition of MSE to align it with the BCBS/IOSCO framework.[5] One element of the proposal would amend the calculation of the average daily aggregate notional amount (''AANA'') of swaps. The proposed rule would greatly reduce the number of days used in the calculation, reducing it from an average of all business days in a three month period to the average of the last business day in each month of a three month period.[6] The result would be that a value now calculated across approximately 60+ data points (*i.e.,* business days) would be confined to only three data points, and could potentially become less representative of an entity's true AANA and swaps exposure. Month-end trading adjustments could greatly skew the AANA average for an entity.

When the Commission adopted the Margin Rule in 2016, it rejected the MSE calculation approach now under renewed consideration. U.S. prudential regulators also declined to follow the BCBS/IOSCO framework in this regard. The Commission noted in 2016 that an entity could ''window dress'' its exposure and artificially reduce its AANA during the measurement period.[7] Even in the absence of window dressing, there are also concerns that short-dated swaps, including intra-month natural gas and electricity swaps, may not be captured in a month-end calculation window. While the MSE and Initial Margin Proposal offers some analysis addressing these issues, it may be difficult to extrapolate market participants' future behavior based on current regulatory frameworks. I look forward to public comment on these issues.

The MSE and Initial Margin Proposal and the MTA Proposal each raise additional concerns that merit public scrutiny and comment. The MTA Proposal, for example, would permit a minimum transfer amount of $50,000 for each SMA of a counterparty. In the event of more than 10 SMAs with a single counterparty (each with an MTA of $50,000), the proposal would functionally displace the existing aggregate limit of $500,000 on a particular counterparty's uncollateralized risk for uncleared swaps. The proposal would also state that if certain entities agree to have separate MTAs for initial and variation margin, the respective amounts of MTA must be reflected in their required margin documentation. Under certain scenarios, these separate MTAs could result in the exchange of less total margin than if initial and variation margin were aggregated.

The MSE and Initial Margin Proposal and the MTA Proposal both articulate rationales why the Commission preliminarily believes that the risks summarized above, and others noted in the proposals, may not materialize. The Commission's experience with relevant staff no-action letters may also appear to lessen concerns around the proposals. While each item standing on its own may not be a significant concern, the collective impact of the proposed rules may be a reduction in the strong protections afforded by the 2016 Margin Rule—and an increase in risk to the U.S. financial system. The Commission must resist the allure of apparently small, apparently incremental, changes that, taken together, dilute the comprehensive risk framework for uncleared swaps.

I look forward to public comments and to continued deliberation on what changes to the MSE and Initial Margin Proposal and the MTA Proposal are appropriate. I thank Commissioner Stump, our fellow Commissioners, and staff of the Division of Swap Dealer and Intermediary Oversight for their extensive engagement with my office on these proposals.

[FR Doc. 2020–18303 Filed 9–22–20; 8:45 am]

BILLING CODE 6351–01–P

[1] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (''Margin Rule'').

[2] *See also* Commodity Exchange Act (''CEA'') section 4s(e). The CEA, as amended by the Dodd-Frank Act, requires the Commission to adopt rules for minimum initial and variation margin for uncleared swaps entered into by SDs and MSPs for which there is no prudential regulator. Although addressed in the rules, there are currently no registered MSPs.

[3] BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), *https://www.bis.org/bcbs/publ/d475.pdf.* The BCBS/IOSCO framework was originally promulgated in 2013 and later revised in 2015.

[4] Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, April 2020, *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[5] 17 CFR 23.151.

[6] Existing Commission regulation 23.151 specifies June, July, and August of the prior year as the relevant calculation months. The proposed rule would amend this to March, April, and May of the current year. The proposed rule would also amend the calculation date from January 1 to September 1. These amendments would be consistent with the BCBS/IOSCO framework.

[7] *See* CFTC Margin Rule, 81 FR at 645.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 801

[Docket No. FDA–2015–N–2002]

RIN 0910–AI47

Regulations Regarding ''Intended Uses''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend its medical product ''intended use'' regulations. This action, if finalized, will amend FDA's regulations describing the types of evidence relevant to determining whether a product is intended for use as a drug or device under the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Public Health Service Act (PHS Act), and FDA's implementing regulations, including whether an approved or cleared medical product is intended for a new use. This action will also repeal and replace the portions of a final rule issued on January 9, 2017, that never became effective. This action is intended to provide direction and

clarity to regulated industry and other stakeholders.

DATES: Submit either electronic or written comments on the proposed rule by October 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 23, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–2002 for ''Amendments to Regulations Regarding 'Intended Uses'.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

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SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to amend its existing regulations (§§ 201.128 and 801.4 (21 CFR 201.128 and 801.4)) describing the types of evidence relevant to determining a product's intended uses under the FD&C Act, the PHS Act, and FDA's implementing regulations, including whether a product meets the definition of a drug or device and whether an approved or cleared medical product is intended for a new use. The Agency issued a proposed rule in 2015 and a final rule in 2017 revising the language of these intended use regulations, with the intent to conform them to the Agency's current practice in applying the regulations (see final rule, ''Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses''' (82 FR 2193, January 9, 2017)). These amendments did not reflect a change in FDA's approach regarding types of evidence of intended use for drugs and devices. However, after receiving a petition that requested the Agency reconsider these amendments, FDA delayed the effective date of the final rule and reopened the docket to invite public comment. A number of comments submitted during the reopening raised questions and

concerns about the amendments. On March 18, 2018, FDA delayed the effective date of the intended use amendments until further notice to allow further consideration of the substantive issues raised in the comments received.

After considering the issues raised in the petition and comments submitted during the reopening, FDA is proposing to repeal the portions of the final rule issued on January 9, 2017, that never became effective and to issue a new rule to provide more clarity regarding the types of evidence that are relevant in determining a product's intended uses. This action is intended to provide direction and clarity to regulated industry and other stakeholders.

B. Summary of the Major Provisions of the Proposed Rule

FDA proposes to amend its intended use regulations for medical products (§§ 201.128 and 801.4) to better reflect the Agency's current practices in evaluating whether a product is intended for use as a drug or device, including whether an approved or cleared medical product is intended for a new use. Some firms have expressed concern that the last sentence of § 201.128 could be read to mean that a firm's mere knowledge of an unapproved use of its approved drug product automatically triggers requirements for new labeling that in turn renders distribution of that approved product unlawful without approval of a supplemental application. Section 801.4 contains comparable language regarding medical devices. The Agency is proposing to delete the last sentence of §§ 201.128 and 801.4 and to insert a new clause in the body of the regulations (''provided, however, that a firm would not be regarded as intending an unapproved new use for an [approved or cleared medical product] based solely on that firm's knowledge that such [product] was being prescribed or used by health care providers for such use'') to clarify that a firm's knowledge that health care providers are prescribing or using its approved or cleared medical product for an unapproved use would not, by itself, automatically trigger obligations for the firm to provide labeling for that unapproved use. In addition, FDA proposes amending the text of §§ 201.128 and 801.4 to provide additional clarification regarding the types of evidence that are relevant to determining a product's intended uses. Additional clarification is provided in the preamble.

FDA is also proposing to insert in §§ 201.128 and 801.4 a reference to § 1100.5 (21 CFR 1100.5), which describes when a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or combination product. This change is being proposed to clarify the interplay between the drug and device intended use regulations and FDA's regulations governing products that are made or derived from tobacco and intended for human consumption.

C. Legal Authority

Among the provisions that provide authority for this proposed rule are sections 201, 403(r), 503(g), and 701(a) of the FD&C Act (21 U.S.C. 321, 343(r), 353(g), 371(a)); section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)); and sections 215, 301, 351(i) and (j), and 361 of the PHS Act (42 U.S.C. 216, 241, 262(i) and (j), and 264).

D. Costs and Benefits

The benefit of this proposed rule is the added clarity and certainty for firms and stakeholders regarding the evidence relevant to establishing whether a product is intended for use as a drug or device, including whether an approved or cleared medical product is intended for a new use. We do not have evidence that the proposed rule would impose costs on currently marketed products.

II. Meaning of Certain Terms in This Preamble

As used in this preamble, the following terms have the meanings noted below.[1]

Term	Meaning
Approved or cleared medical product.	This term refers to a medical product that may be legally introduced into interstate commerce for at least one use under the FD&C Act or the PHS Act as a result of having satisfied applicable premarket statutory and regulatory requirements (including devices that are granted marketing authorization or are exempt from premarket notification).
Approved or cleared medical use.	This term refers to an intended use included in the required labeling for an FDA-approved medical product, an intended use included in the indications for use statement for a device cleared or granted marketing authorization by FDA, or an intended use of a device that falls within an exemption from premarket notification.
Firms	This term refers to manufacturers, packers, and distributors of FDA-regulated products and all their representatives, including both individuals and corporate entities.
Health care providers	This term refers to individuals such as physicians, veterinarians, dentists, physician assistants, nurse practitioners, pharmacists, or registered nurses who are licensed or otherwise authorized by the State to prescribe, order, administer, or use medical products.
Medical products	This term refers to drugs and devices, including human biological products.
Products unapproved for any medical use.	This term refers to medical products that are not approved or cleared (as that term is described above) by FDA for any medical use, and which must be approved or cleared to be legally marketed for such use. This term also includes products that are marketed for non-medical uses, such as dietary supplements, conventional foods, and cosmetics.
Unapproved use of an approved product.	This term refers to an intended use that is not included in the required labeling of an FDA-approved medical product, an intended use that is not included in the indications for use statement for a device cleared or granted marketing authorization by FDA, or an intended use of a device that does not fall within an exemption from premarket notification.

[1] Nothing in this table is intended to construe terms in the FD&C Act, the PHS Act, or FDA's implementing regulations, nor does the information in the table otherwise affect discussions outside the context of this preamble.

III. Background

A. Introduction and History of the Rulemaking

In the **Federal Register** of September 25, 2015 (80 FR 57756), FDA issued a proposed rule entitled ''Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses.''' Among other proposals, that 2015 notice of proposed rulemaking proposed certain changes to FDA's existing regulations describing the types of evidence relevant to determining a product's intended uses (see §§ 201.128 (drugs) and 801.4 (devices)). These amendments were intended to clarify FDA's existing interpretation and application of these regulations (see 80 FR 57756 at 57761). Specifically, the amendments were intended to clarify that a firm would not be regarded as intending an unapproved new use for an approved product based solely on that firm's knowledge that its product was being prescribed or used by health care providers for such use (see 80 FR 57756 at 57761). FDA proposed to delete the last sentence of the intended use regulations (§§ 201.128 and 801.4) to provide this clarification, in addition to some other changes.

Before FDA's issuance of the proposed rule in 2015, some firms had expressed concern with the last sentence of § 201.128. (Refs. 1 to 3). That sentence states that if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug that accords with such other uses. (§ 801.4 contains comparable language.) These firms asserted (with some variations in the argument) that this sentence could be read to mean that whenever a manufacturer knew that its approved drug was being prescribed or used by a health care provider for an unapproved use, the manufacturer would be required to alter the labeling of a drug to provide adequate directions for such unapproved use. Firms further asserted that this addition to FDA-approved labeling would transform the drug into a new drug that cannot be sold without first obtaining approval of a supplemental new drug application pursuant to sections 201(p) and 505(a) (21 U.S.C. 355(a)) of the FD&C Act.[2] Firms asserted that, based on this, under the last sentence of § 201.128, a manufacturer's mere knowledge of an unapproved use of its approved drug automatically triggers requirements for new labeling that in turn renders distribution of that approved product unlawful without approval of a supplemental application.

In the 2015 proposed rule, the proposed deletion of the last sentence of §§ 201.128 and 801.4 was intended to clarify the following: When a firm is distributing an approved or cleared medical product, evidence that the firm knows that health care providers are prescribing or using that approved or cleared medical product for an unapproved use would not, by itself, automatically trigger obligations for the firm to provide labeling for the uses for which the health care providers are prescribing or using the product. FDA's clarification of its position and proposed deletion of the last sentence of these regulations in the proposed rule was not intended to suggest that FDA sought to otherwise change the scope of evidence relevant to intended use.

At the time the final rule issued in January 2017, FDA believed that the goals described in the preceding paragraph would be better achieved by amending the last sentence of each intended use regulation, rather than by deleting the sentences (see 82 FR 2193 at 2206). In the preamble to that final rule, FDA explained that the revised language was intended to achieve the goal described in the proposed rule by amending the last sentence so that it no longer suggested that a firm's mere knowledge that its approved or cleared product is being prescribed or used for an unapproved use would, on its own, trigger the requirement to provide adequate labeling (see 82 FR 2193 at 2206). The revised sentence was also intended to reflect FDA's longstanding position, discussed in both the preambles to the 2015 proposed rule and the 2017 final rule, that the intended use of a product can be evaluated based on ''any relevant source of evidence,'' including a variety of direct and circumstantial evidence (see 82 FR 2193 at 2206). The text of the final rule used the phrase ''the totality of the evidence'' to accomplish these goals (see 82 FR 2193 at 2206).

The final rule was published with an initial effective date of February 8, 2017, which was delayed until March 21, 2017, in accordance with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review'' (Ref. 4). On February 8, 2017, various industry organizations filed a petition (Docket No. FDA–2015–N–2002–1977) raising concerns with the January 2017 final rule. In March 2017, we further delayed the effective date of the final rule and reopened the docket to invite additional public comment. In March 2018, we delayed the effective date of the intended use amendments until further notice to allow for further consideration of the substantive issues raised in the comments received. Having considered these issues, FDA is proposing to repeal the intended use amendments contained in the final rule issued on January 9, 2017, that never took effect, and to issue a new rule that would replace the January 2017 rule in amending the intended use regulations to further clarify the types of evidence relevant to determining a product's intended uses. The January 2017 final rule also added a new regulation (§ 1100.5) to title 21 of the CFR (see 82 FR 2193 at 2217). That regulation became effective on March 19, 2018. Its status is unaffected by this proposed rule.

B. How Intended Use Is Evaluated

FDA's longstanding position is that, in evaluating a product's intended use, any relevant source of evidence may be considered. This position is unchanged and has solid support in the case law (see, *e.g., United States* v. *Storage Spaces Designated Nos. 8 and 49,* 777 F.2d 1363, 1366 (9th Cir. 1985); *Action on Smoking and Health* v. *Harris,* 655 F.2d 236, 239 (D.C. Cir. 1980); *Nat'l Nutritional Foods Ass'n* v. *Mathews,* 557 F.2d 325, 334 (2d Cir. 1977); *United States* v. *Article of 216 Cartoned Bottles, ''Sudden Change,''* 409 F.2d 734, 739 (2d Cir. 1969); *V.E. Irons, Inc.* v. *United States,* 244 F.2d 34, 44 (1st Cir. 1957); *United States* v. *LeBeau,* 2016 U.S. Dist. LEXIS 13612, *27, 2016 WL 447612 (E.D. Wis. Feb. 3, 2016), *aff'd,* 654 Fed. App'x 826, 831 (7th Cir. 2016); *United States* v. *Schraud,* 2007 U.S. Dist. LEXIS 89231, *5 (E.D. Mo. Dec. 4, 2007); *Hanson* v. *United States,* 417 F. Supp. 30, 35 (D. Minn.), *aff'd,* 540 F.2d 947 (8th Cir. 1976)). Evidence of intended use may include, but is not limited to, the product's labeling, promotional claims, and advertising. For example, any claim or statement made by or on behalf of a firm that explicitly or implicitly promotes a product for a particular use may be taken into account.

A firm's subjective claims of intent, however, are not necessarily determinative of a product's intended use. Objective evidence of the firm's intent, which can include a variety of direct and circumstantial evidence, is also relevant, particularly when it

[2] The same argument could apply with respect to new animal drugs (see sections 201(v) and 512(a) (21 U.S.C. 360b(a) of the FD&C Act).

contradicts the firm's claims. Indeed, courts have rejected the proposition that evidence of intended use is limited to labeling or other claims by a manufacturer concerning a device or drug (see *Nat'l Nutritional Foods Ass'n* v. *Mathews,* 557 F.2d 325, 334 (2d Cir. 1977) (''In determining whether an article is a 'drug' because of an intended therapeutic use, the FDA is not bound by the manufacturer's subjective claims of intent but can find actual therapeutic intent on the basis of objective evidence. Such intent also may be derived or inferred from labeling, promotional material, advertising, and any other relevant source.'') (internal citation and quotations omitted); *United States* v. *Travia,* 180 F. Supp. 2d 115, 119 (D.D.C. 2001) (''Labeling is not exclusive evidence of the sellers' intent. Rather, as the very language quoted by the defendants themselves states, 'it is well established ''that the intended use of a product, within the meaning of the [FD&C Act], is determined from its label, accompanying labeling, promotional claims, advertising, *and any other relevant source*'''. . . . even *consumer* intent could be relevant, so long as it was pertinent to demonstrating the seller's intent . . . [I]f the government's allegations are true, the sellers did not need to label or advertise their product, as the environment provided the necessary information between buyer and seller. In this context, therefore, the fact that there was no labeling may actually bolster the evidence of an intent to sell a mind-altering article without a prescription—that is, a misbranded drug.'') (citations omitted); *United States* v. *Vascular Solutions, Inc.,* 181 F. Supp. 3d 342, 347 (W.D. Tex. 2016) (''[T]hough [21 CFR] 801.4 indeed says that 'objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives,' nowhere does the regulation state that such statements or claims cannot be used to show objective intent unless they were published to the marketplace.''); see also *United States* v. *Storage Spaces Designated Nos. 8 and 49,* 777 F.2d 1363, 1366 n.5 (9th Cir. 1985) (concluding that products innocuously labeled as ''incense'' and ''not for drug use'' were in fact drugs when the ''overall circumstances'' demonstrated vendor's intent that products be used as cocaine substitutes); *United States* v. *An Article of Device Toftness Radiation Detector,* 731 F.2d 1253, 1257 (7th Cir. 1984) (intended use established in part by witness testimony that device had been used to treat patients, together with other evidence regarding a training program and financial arrangements offered by the defendant); *United States* v. *Undetermined Quantities of an Article of Drug Labeled as* ''*Exachol,*'' 716 F. Supp. 787, 791 (S.D.N.Y. 1989) (explaining that ''FDA is not bound by the vendor's subjective claims of intent'' and that ''[a]n article intended to be used as a drug will be regulated as a drug . . . even if the products [sic] labelling states that it is not a drug'')).

Courts have repeatedly held that intended use is determined by looking to all relevant evidence, including statements and circumstances surrounding the manufacture and distribution of a product (see, *e.g., United States* v. *Article of 216 Cartoned Bottles . . .*''*Sudden Change,*'' 409 F.2d 734, 739 (2d Cir. 1969) (''It is well settled that the intended use of a product may be determined from its label, accompanying labeling, promotional material, advertising and any other relevant source.'') (citations omitted); *V.E. Irons, Inc.* v. *United States,* 244 F.2d 34, 44 (1st Cir. 1957) (observing that a court is ''free to look to all relevant sources in order to ascertain what is the 'intended use' of a drug'')). As explained by one court: ''Whether a product's intended use makes it a device depends, in part, on the manufacturer's *objective* intent in promoting and selling the product. All of the circumstances surrounding the promotion and sale of the product constitute the 'intent.' It is not enough for the manufacturer to merely *say* that he or she did not 'intend' to sell a particular product as a device. Rather, the actual circumstances surrounding the product's sale . . . determine the 'intended' use of the product as a device under the Act'' (*United States* v. *789 Cases, More or Less, of Latex Surgeons' Gloves,* 799 F. Supp. 1275, 1285 (D.P.R.1992) (emphasis in original) (internal citations omitted)).

As FDA has previously stated, however, the Agency would not regard a firm as intending an unapproved use for its approved medical product based solely on the firm's knowledge that such product was being prescribed or used by health care providers for such use (80 FR 57756 at 57757; 82 FR 2193 at 2206–2207). Health care providers sometimes prescribe or use approved or cleared medical products for unapproved uses when they judge that the unapproved use is medically appropriate for their individual patients.[3] In such circumstances, FDA does not consider a firm's knowledge that a health care provider has prescribed or used its approved or cleared medical product for an unapproved use to be sufficient by itself to establish the intended use element of a prohibited act related to the lack of premarket approval or clearance of that use or the lack of adequate directions for use.[4] Instead, FDA examines all relevant evidence, which could include, in combination with other facts, a firm's knowledge that health care providers are prescribing or using its approved or cleared medical product for an unapproved use, to determine whether there is sufficient evidence to establish a new intended use.

Some comments submitted in the earlier rulemaking presented views regarding First Amendment considerations relating to how a product's intended use is established. However, treating knowledge as a category of evidence that may be considered as evidence of intended use does not, in itself, implicate the First Amendment. Knowledge and speech are not coextensive. A variety of direct and circumstantial evidence can establish a person's knowledge; a person's speech can be one source—but is not the only source—of evidence of that person's knowledge. The proposed amendments are not intended to address specific concerns arising under the First Amendment, but instead seek to address an ambiguity in the language of the regulations and to conform that language to FDA's existing policy. Accordingly, and consistent with the statutory framework and purposes, FDA

[3] FDA generally does not seek to interfere with the exercise of the professional judgment of health care providers in prescribing or using, for unapproved uses for individual patients, most legally marketed medical products. This longstanding position has been codified with respect to devices (see 21 U.S.C. 396). Although FDA generally does not seek to interfere with the exercise of the professional judgment of veterinarians, certain unapproved uses of drugs in animals are not permitted (see section 512(a)(4) and (5) of the FD&C Act and 21 CFR part 530) and result in the drug being deemed ''unsafe'' and therefore adulterated under sections 512 and 501(a)(5) (21 U.S.C. 351(a)(5)) of the FD&C Act).

[4] See 21 U.S.C. 331(a), 331(d), 351(f), 352(f)(1), 355(a), 360b. That position does not apply to products that are not already legally marketed as medical products for at least one use. Similarly, nothing in this regulation or preamble is intended to interfere with the application of 21 U.S.C. 333(e), which, subject to limited exceptions, penalizes anyone who ''knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services under section 505 [of the FD&C Act] and pursuant to the order of a physician.'' Furthermore, Congress or the Agency could issue other product-specific or product class-specific provisions that recognize knowledge as sufficient evidence of a particular element of a prohibited act.

is clarifying in this rulemaking that while knowledge can be within the types of evidence that are relevant to establishing intended use, a firm's knowledge that its approved or cleared medical product is being prescribed or used by health care providers for an unapproved use would not be relied upon as the sole evidence of a new intended use.

Some comments submitted in the earlier rulemaking suggested that FDA should rely exclusively on firms' claims to establish intended use. This narrow view of intended use would not only create a loophole for firms that would enable them to evade FDA oversight of the marketing of approved or cleared medical products for unapproved uses, but would also open the door to the marketing of products that are unapproved for any medical use—all to the detriment of the public health. As courts have recognized, ''[s]elf-serving labels cannot be allowed to mask the vendor's true intent as indicated by the overall circumstances'' (*United States* v. *Storage Spaces Designated Nos. 8 and 49,* 777 F.2d 1363, 1366 n.5 (9th Cir. 1985)). As one court explained, ''[a] disease claim made with a wink and a nudge is still a disease claim. To hold otherwise would create an 'obviously wide loophole' that would defeat the 'high purpose of the Act to protect consumers' '' (*United States* v. *Cole,* 84 F. Supp. 3d 1159, 1166 (D. Or. 2015) (citation omitted)). Examples where the government has relied on evidence other than express claims to establish intended use include situations where products contained a pharmacological ingredient such as the active ingredient from approved erectile dysfunction and hair-loss products, albuterol, or steroids, but were labeled as herbal supplements, leather cleaner, incense, potpourri, bath salts, or ''for research purposes only.'' Similar examples for devices include: (1) Products that are labeled as laser pointers or hyperbaric chambers but, based on other objective evidence, are actually intended by the manufacturer or the distributor to treat serious conditions such as cancer, diabetes, multiple sclerosis, human immunodeficiency virus (HIV), and autism; and (2) a product with a reservoir that is cleared for use with a saline solution to moisten tissue but, based on other objective evidence, is actually intended to deliver a drug (*e.g.,* steroids) to the tissue. The government has also considered firms' directions to their sales forces in determining intended use. Thus, in addition to claims, FDA may also take into account any circumstances surrounding the distribution of the product or the context in which it is sold (see *An Article of Device Toftness Radiation Detector,* 731 F.2d at 1257; see also *United States* v. *Travia,* 180 F. Supp. 2d 115, 119 (D.D.C. 2001)). Considering evidence other than express claims often ensures that FDA is able to pursue firms that attempt to evade FDA medical product regulation by avoiding making express claims about their products.

This rule, if finalized, would be consistent with the First Amendment. First, the rule is limited in scope. It describes evidence that *may be relevant* to establishing intended use, but it does not dictate that certain evidence *will be determinative* of intended use in an individual case.[5] Second, nothing in this proposed rule, if finalized, would affect any exclusion explicitly provided by statute or regulation from the definitions of *drug* or *device*.[6] Third, the proposed revisions to the intended use regulations do not reflect a change in FDA's policies and practices, as articulated in various guidance documents, regarding the types of firm communications that ordinarily would not, on their own, establish the firm's intent that an approved or cleared medical product be used for an unapproved use.[7] If a firm's communication is consistent with the recommended practices described in FDA guidance, such a communication, on its own, would not be evidence of a new intended use.[8]

Courts have long upheld the premarket review requirements of the FD&C Act and the PHS Act, and the role of intended use within that framework,[9] as necessary to promote and protect the public health and as fully consistent with the First Amendment. Courts have held that the government's reliance on speech as evidence of intended use under the FD&C Act does not infringe the right of free speech under the First Amendment based on Supreme Court precedent establishing that ''[t]he First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent'' (*Wisconsin* v. *Mitchell,* 508 U.S. 476, 489 (1993)). The D.C. Circuit applied that precedent in the context of the FD&C Act and held that ''th[e] use of speech to infer intent, which in turn renders an otherwise permissible act unlawful, is constitutionally valid'' and hence ''it is constitutionally permissible for the FDA to use speech [by the manufacturer] . . . to infer intent for purposes of determining that [the manufacturer's] proposed sale . . . would constitute the forbidden sale of an unapproved drug'' (*Whitaker* v. *Thompson,* 353 F.3d 947, 953 (D.C. Cir. 2004); see also *Nicopure Labs, LLC* v. *FDA,* 944 F.3d 267, 283 (D.C. Cir. 2019) (''Just as the government may consider speech that markets a copper bracelet as an arthritis cure . . . in order to subject the item to appropriate regulation, so, too, the FDA may rely on e-cigarette labeling and other marketing claims in order to subject e-cigarettes to appropriate regulation''); *Flytenow, Inc.* v. *FAA,* 808 F.3d 882, 894 (D.C. Cir. 2015) (upholding ''us[e of] speech (postings on Flytenow.com) as evidence that pilots are offering service that exceeds the limits of their certifications''). Likewise, although the Second Circuit's decision in *United States* v. *Caronia,* 703 F.3d 149 (2d Cir. 2012), ''construe[d] the misbranding provisions of the FDCA as not prohibiting and criminalizing the truthful off-label promotion of FDA-approved prescription drugs'' and concluded that ''the government cannot prosecute pharmaceutical manufacturers and their representatives under the FDCA for speech promoting the lawful, off-label use of an FDA-

[5] Because ''intended use'' is only one element of an alleged violation of the FD&C Act, this rule does not itself implicate the First Amendment and does not attempt to resolve all First Amendment arguments that might be made by a firm in defending against an enforcement action under the FD&C Act.

[6] For example, section 201(g)(1) of the FD&C Act contains exclusions from the drug definition for two types of labeling claims that would otherwise subject a product to regulation as a drug: (1) Structure/function claims and certain related claims in the labeling of dietary supplements, when made in accordance with section 403(r)(6) of the FD&C Act; (2) health claims in the labeling of a conventional food or dietary supplement, when made in accordance with section 403(r)(3) or (r)(5)(D) of the FD&C Act, as applicable.

[7] The Agency has issued several final guidance documents that describe circumstances in which the Agency does not intend to object to a firm's product communications or to view such communications as evidence of a new intended use (sometimes referred to as ''safe harbors'') (Refs. 5 to 7). The Agency has also recognized ''safe harbors'' in draft guidance documents (Refs. 8 and 9). When final, these documents will represent FDA's current thinking on these topics. The Agency invites comment on whether any elements of these guidances warrant codification in the regulations.

[8] As noted elsewhere in this preamble, this is not to suggest that these communications must be excluded from consideration altogether. For example, if there is other evidence of a new intended use for a product, such communications may be evaluated in assessing the classification and regulatory status of the product.

[9] It should be noted that intended use is relevant in contexts other than premarket approval and clearance. For example, FDA evaluates intended use in determining whether research studies involving human subjects involve the administration of a drug and must be conducted under an investigational new drug application (see 21 CFR part 312).

approved drug,'' *id.* at 168–169,[10] the decision ''left open the government's ability to prove misbranding on a theory that promotional speech provides evidence that a drug is intended for a use that is not included on the drug's FDA-approved label.'' *United States ex rel. Polansky* v. *Pfizer,* Inc., 822 F.3d 613 n.2 (2d Cir. 2016).

In addition, FDA's consideration of speech as one type of evidence of intended use under its statutory and regulatory framework directly advances, and is appropriately tailored to achieve, substantial public health interests relevant to analyses under *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n,* 447 U.S. 557, 563–64 (1980).[11] The medical products FDA regulates have the potential to adversely impact public health and safety. The premarket review requirements of the FD&C Act and the PHS Act require companies to conduct scientific research to determine the safety and effectiveness of medical products before they are marketed and provide mechanisms to help ensure that protections are in place that will allow the public to obtain the benefits of these products while mitigating the risks.[12] Accordingly, these premarket review provisions ''do[] not ban manufacturers from making accurate claims'' but instead ''require[] them to substantiate such claims.'' *Nicopure Labs, LLC,* 944 F.3d at 285.

IV. Legal Authority

Among the statutory provisions that provide authority for this proposed rule are sections 201, 403(r), 503(g), and 701(a) of the FD&C Act, section 5(b)(3) of the Orphan Drug Act, and section 351(i) of the PHS Act (21 U.S.C. 262). Section 201 of the FD&C Act defines ''drug'' (subsection (g)(1)), ''device'' (subsection (h)), ''food'' (subsection (f)), ''dietary supplement'' (subsection (ff), ''cosmetic'' (subsection (i)), and ''tobacco product'' (subsection (rr)(1)); section 5(b)(3) of the Orphan Drug Act defines ''medical food''; and section 503(g) of the FD&C Act provides that combination products are those ''that constitute a combination of a drug, device, or biological product.'' Section 351(i) of the PHS Act defines ''biological products'' (21 U.S.C. 262), and section 351(j) of the PHS Act provides that the requirements of the FD&C Act apply to biological products (21 U.S.C. 262). Section 403(r) of the FD&C Act establishes the requirements under which certain labeling claims about uses of conventional foods and dietary supplements to reduce the risk of a disease or affect the structure or function of the human body are not evidence of intended use as a drug. Under section 701(a) of the FD&C Act, FDA has authority to issue regulations for the efficient enforcement of the FD&C Act. FDA regulates the manufacture, sale, and distribution of drugs, devices, combination products, tobacco products, foods (including dietary supplements), and cosmetics under the authority of the FD&C Act.

V. Description of the Proposed Rule

A. Introduction

FDA is issuing this proposed rule to clarify the types of evidence relevant to determining a product's intended uses, including determining whether a product meets the definitions of drug or device and whether an approved or cleared medical product is intended for a new use. The proposed rule would insert in §§ 201.128 and 801.4 a reference to § 1100.5, to clarify the interplay between the medical product intended use regulations and the regulation that describes when a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or combination product. The Agency also proposes to delete the final sentence of §§ 201.128 and 801.4 and to insert a new clause in the body of the regulations (''provided, however, that a firm would not be regarded as intending an unapproved new use for an [approved or cleared medical product] based solely on that firm's knowledge that such [product] was being prescribed or used by health care providers for such use'') to clarify that a firm would not be regarded as intending an unapproved use for its approved product based solely on that firm's knowledge that its product was being prescribed or used by health care providers for such use. FDA is also proposing additional changes to the codified text to clarify and reinforce that intended use can be based on any relevant source of evidence, including a variety of direct and circumstantial evidence.

In the following sections, FDA provides several examples of types of evidence relevant to establishing intended use. These examples are provided for illustrative purposes only and are not intended to be comprehensive or restrictive. In fulfilling its mission to protect the public health, FDA will evaluate the individual and unique circumstances of each case in determining a product's intended use. In some cases, a single piece of evidence may be dispositive of a product's intended use. In others, several elements combined may establish a product's intended use.

B. Types of Evidence Relevant to Establishing Intended Use

1. Express Claims and Representations

In determining a product's intended use, any claim or statement made by or on behalf of a firm that explicitly represents a product for a particular use is relevant. This can include, but is not limited to, labeling claims and representations (whether made in required labeling or labeling that is optional or promotional), advertising matter, and oral or written statements by persons responsible for the labeling, or their representatives.

2. Implied Claims

Any claim or statement made by or on behalf of a firm that implicitly represents a product for a particular use is also relevant to intended use. Examples of such implicit claims may include the following:

- Suggestive product names such as Chronix, Shroomz, or e-Cialis;

[10] This holding was ''limited to FDA-approved drugs for which off-label use is not prohibited.'' 709 F.3d at 168–69. Any constitutional interest in such speech does not extend to speech promoting the introduction of a wholly unapproved medical product into interstate commerce, which is an illegal activity. See *United States* v. *Caputo*, 517 F.3d 935, 939–40 (7th Cir. 2008); *United States* v. *Cole*, 84F. Supp. 3d 1159, 1166–67 (D.Or. 2015).

[11] In *Sorrell* v. *IMS Health Inc.,* 564 U.S. 552, 565 (2011), the Supreme Court explained that content-based commercial speech restrictions may be subject to ''heightened judicial scrutiny.'' Several courts of appeals have subsequently concluded that *Sorrell* did not overrule or fundamentally alter the *Central Hudson* analysis. See *Retail Digital Network, LLC* v. *Prieto,* 861 F.3d 839, 846 (9th Cir. 2017) (en banc) (*Sorrell* ''did not mark a fundamental departure from *Central Hudson's* four-factor test, and *Central Hudson* continues to apply'' to regulations of commercial speech, regardless of whether they are content based); *Missouri Broad. Ass'n* v. *Lacy,* 846 F.3d 295, 300 n.5 (8th Cir. 2017) (''The upshot [of *Sorrell]* is that when a court determines commercial speech restrictions are content- or speaker-based, it should then assess their constitutionality under *Central Hudson.*'') (quotation marks omitted; alteration in original); see also *Vugo, Inc.* v. *City of New York,* 931 F.3d 42, 50 (2d Cir. 2019) (''No Court of Appeals has concluded that *Sorrell* overturned *Central Hudson.* We agree with our sister circuits that have held that *Sorrell* leaves the *Central Hudson* regime in place, and accordingly we assess the constitutionality of the City's ban under the *Central Hudson* standard.''), cert. denied, 2020 U.S. LEXIS 2437 (Apr. 27, 2020).

[12] See Eguale, T., D.L. Buckeridge, A. Verma, et al., ''Association of Off-Label Drug Use and Adverse Drug Events in an Adult Population,'' *Journal of American Medical Association Internal Medicine,* 176(1):55–63, 2016 (summarizing study across cohort of 46,000 patients, and concluding that unapproved use of prescription drugs is associated with adverse drug events, particularly where those uses lack strong scientific evidence in the form of at least one randomized controlled trial) (Ref. 10).

• Statements that imply an intended use, such as ''For best results use approximately 30–45 minutes prior to engaging in sexual intercourse''; or

• Representations that the product contains a particular ingredient to imply a physiological effect, such as the inclusion of ''aspirin'' or ''sildenafil'' in the ingredient list.

3. Product Characteristics and Design

The characteristics of the product and its design are relevant to establishing intended use. Examples of such evidence include the following:

• The known physiological effects (medical or recreational) of a product that is unapproved for any medical use (for example, products containing an active pharmaceutical ingredient (API) [13] or an analogue of an API or controlled substance).

○ Example scenarios might include dried herbs treated with synthetic tetrahydrocannabinol (THC), or coffee containing sildenafil.

• The known use (recreational or medical) of a product that is unapproved for any medical use.

○ Example scenarios might include 2,4-Dinitrophenol (DNP) being used for weight loss, herbal products being used for pain management, or a product being used for a medical purpose for which it provides no known benefit (*e.g.,* Laetrile (amygdalin) for cancer).

• The product's design or technical features.

○ Example scenarios might include a stent that is specifically sized for a use that is different from the purported use; a suture delivery device with a snare loop sized for a specific procedure that is different from the purported use; a device that includes software with a diagnostic function when the purported use does not include diagnosis; or products that purport to remove only the stratum corneum (outer layer of the skin) but that are actually designed to penetrate below the stratum corneum into the living layers of the skin.

4. Circumstances of the Sale or Distribution

The types of evidence relevant to establishing intended use also include circumstances surrounding the distribution of the product and the context in which it is sold, including the following:

• To whom and for whom the products are offered, such as a firm's repeated proactive detailing and delivery of large amounts of complimentary product samples to a health care provider whose patient population does not fall within the product's approved population.

• Circumstances and context surrounding the sale, such as balloons containing laughing gas (nitrous oxide) being sold outside a rock concert, or the repackaging of bulk product into smaller plastic bags and using personal, not business, emails and addresses for communications and deliveries.

C. Examples of Evidence That, Standing Alone, Are Not Determinative of Intended Use

1. Knowledge, Alone or in the Context of ''Safe Harbors,'' of Health Care Providers Prescribing or Using an Approved Product for an Unapproved Use

As discussed previously, a firm will not be regarded as intending an unapproved use of an approved product based solely on that firm's knowledge that the product is being prescribed or used by health care providers for such use.[14] One example that would not, standing alone, be considered evidence of a new intended use might include the following scenario:

• A pharmaceutical firm tracks sales and distribution metrics. The firm notes that one of its products, approved for use only in adults, is being ordered by and distributed to many medical practices that treat exclusively pediatric populations. The firm does not give any direction to its sales or marketing staff to disseminate samples or information about this product to these pediatric practices.

Similarly, knowledge in combination with conduct that falls within an acknowledged FDA ''safe harbor'' would not be determinative of intended use. For example:

• A pharmaceutical firm tracks sales and distribution metrics. The firm notes that one of its products, approved for the treatment of adult patients with acute lymphoblastic leukemia (ALL), is being ordered by and distributed to many medical practices that treat exclusively pediatric oncology populations. The firm also notes that the National Comprehensive Cancer Network clinical practice guidelines (CPG) for the treatment of ALL in pediatric patients recommends the firm's drug product as a treatment option. The pharmaceutical firm distributes copies of the CPG at medical conferences, following all recommendations made in the revised draft guidance, ''Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices'' (Ref. 8). The firm does not give any direction to its sales or marketing staff to disseminate samples or information about this product to practices that treat pediatric cancer patients exclusively.

We note that in some cases, knowledge that a product was being prescribed or used by health care providers for an unapproved use could be considered relevant to establishing a new intended use where there is additional evidence of intended use (but excluding, as discussed above, evidence that falls within FDA's acknowledged ''safe harbors'' for dissemination of information about an unapproved use of an approved product).

2. Additional Examples That, Standing Alone, Are Not Determinative of Intended Use

There are examples of other circumstances that, standing alone, would not be determinative of intended use. For example, there may be limited instances where a firm disseminates safety information about an unapproved use to health care providers to minimize risk to patients. Such dissemination, on its own, would not ordinarily be dispositive evidence of a new intended use. The scenario below provides one example of a situation in which a firm could disseminate safety and warning information without triggering the prohibitions on distributing a product for an unapproved use and misbranding a product by failing to provide adequate directions for use. The following example is fact-specific and is provided for illustrative purposes only.

• The unapproved use of a firm's approved drug is broadly accepted by the medical community and the firm

[13] The acronym ''API'' in this category includes active drug ingredients, whether or not they are in an approved drug. As used here, ''API'' does not include a biologically active dietary ingredient in a dietary supplement.

[14] Nothing in this rulemaking is intended to change a firm's existing obligations and responsibilities under the FD&C Act, the PHS Act, or FDA's implementing regulations to take action with respect to safety information including: (1) Updating its labeling to ensure that the labeling is not false or misleading or for other reasons; (2) reporting serious adverse events or other postmarketing safety reports to the Agency; or (3) issuing recalls, corrections, and removals. See, for example, 21 CFR 201.56(a)(2) (''[approved human prescription drug and biological product] labeling must be updated when new information becomes available that causes the labeling to become inaccurate, false, or misleading''); 21 CFR 314.70, 514.8(c), 601.12, 814.39, and 814.108 (concerning supplements and other changes to approved medical product applications, including labeling); 21 U.S.C. 321(n) and 21 CFR 1.21(a) (providing that material omissions can be misleading); 21 CFR 314.80 (postmarketing reporting of adverse drug experiences); 21 CFR 514.80 (records and reports concerning experience with approved new animal drugs); 21 CFR part 803 (obligations under medical device reporting); 21 CFR part 806 (medical device reports of corrections and removals); 21 CFR part 810 (medical device recalls); 21 CFR part 7, subpart B (recalls).

has submitted an efficacy supplement to add the unapproved use to the labeling of the drug. The boxed warning and risk evaluation and mitigation strategy (REMS) materials for the drug warn of potential risks related to the unapproved use in general terms, but the firm disseminates additional specific safety and warning information to health care providers to minimize the risk to patients receiving the drug for the unapproved use. The safety and warning information does not expressly or implicitly promote the efficacy of the unapproved use.

Below are some additional examples that, without other evidence, would not establish a new intended use. This list is not intended to be comprehensive or restrictive. Each scenario is fact-specific, and, under other circumstances or in other contexts, similar material may be evaluated differently.

- A firm's official social media account ''follows'' the social media account for a 501(c)(3) non-profit that supports patients with a rare disease for which there is no FDA-approved treatment. The firm is in the process of investigating one of its FDA-approved products for use in the rare disease that the non-profit account supports. The non-profit account disseminates messages about charity events, scientific conferences, support groups, and rare disease research and drug development. The firm account does not make any comments or otherwise endorse any specific posts on the non-profit account.
- During an internal meeting, a firm's CEO displays a slide of internal sales projections for its approved product. The slide reflects potential sales for an unapproved use that is widely recognized as the standard of care.
- A firm makes corporate filings or submissions to the U.S. Securities and Exchange Commission that include required disclosures of development activities or potential or actual sales for an unapproved use.
- Following a clinical trial, the sponsoring firm prepares a plain-language summary of the aggregated clinical trial results and provides the summary solely to clinical trial participants to acknowledge their contributions to scientific and medical advancement (not to inform prescribing and use decisions). The summary provides a factual, balanced, and complete presentation of the trial results, including relevant safety information and any limitations of the study. The summary does not make any conclusions about the safety or effectiveness of the unapproved product or the unapproved use, and it includes a conspicuous and prominent statement that the product or use has not been approved, cleared, or licensed by FDA.

VI. Proposed Effective Dates

The Agency proposes that any final rule based on this proposed rule will become effective 30 days after the date of publication of the final rule in the **Federal Register**.

VII. Preliminary Economic Analysis of Impacts

A. Introduction and Summary

1. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs. This proposed rule is a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. We cannot predict how many companies may revise labeling, advertising, or other materials, or otherwise modify their behavior, following issuance of this rule. However, because this rule would merely clarify, but not change, the types of evidence relevant to determining manufacturers' intended use of products, any such changes would be voluntarily undertaken by firms. Because the proposed rule would not extend FDA's authority to additional products or impose any additional requirements on currently regulated products, we expect the proposed rule will impose negligible costs, if any. As a result, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

2. Summary of Costs and Benefits

The proposed rule clarifies but does not change FDA's interpretation and application of existing intended use regulations for medical products.

The benefits of this rule are additional clarity and certainty for manufacturers and stakeholders regarding evidence that is relevant in evaluating whether an article is intended for use as a drug or device.

This proposed rule is not expected to impose any significant additional costs on firms. Although this rule may impact firms' future marketing, product development, and communication strategies, firms are not required to make any changes to labeling, marketing materials, or operating procedures. Additionally, this rule does not extend FDA's jurisdiction to any new products.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered	
Benefits:							
Annualized					7		

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered	
Monetized $millions/year					3		
Annualized					7		
Quantified					3		
Qualitative	Clarification of intended use interpretation and application						
Costs:							
Annualized					7		
Monetized $millions/year					3		
Annualized					7		
Quantified					3		
Qualitative	Negligible costs, if any						
Transfers:							
Federal					7		
Annualized Monetized $millions/year					3		
From/To	From:			To:			
Other					7		
Annualized Monetized $millions/year					3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: None
Small Business: None
Wages: None
Growth: None

B. Preliminary Economic Analysis of Impacts

1. Background

This rule clarifies FDA's longstanding position that the intended use of a drug or device product can be based on any relevant source of evidence by describing types of evidence relevant to the intended use of a product and types of evidence that, standing alone, are not determinative of intended use.

One important clarification involves a manufacturer's knowledge of unapproved uses of its approved product. Current versions of §§ 201.128 and 801.4 specify that a manufacturer of a drug (§ 201.128) or device (§ 801.4) must include adequate labeling if it knows its product is used for an unapproved purpose. The September 2015 proposed rule (80 FR 57756 at 57764) removed the sentence regarding the requirement to provide adequate labeling if a firm knows its product is being used for an unapproved use. The amended January 2017 final rule (82 FR 2193 at 2217) was intended to clarify FDA's position by requiring manufacturers to include adequate labeling ''if the totality of the evidence establishes that a manufacturer objectively intends that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than ones for which it is approved (if any).''

In the **Federal Register** of February 7, 2017 (82 FR 9501), FDA delayed the effective date of the January 2017 final rule until March 2017. In February 2017, various industry organizations filed a petition raising concerns with the January 2017 final rule, requesting reconsideration and a stay. The petition requested that FDA reconsider the amendments to the ''intended use'' regulations and issue a new final rule that, with respect to the intended use regulations at §§ 201.128 and 801.4, reverted to the language of the September 2015 proposed rule. The petition also requested that FDA indefinitely stay the rule because petitioners argued that the final rule was issued in violation of the fair notice requirement under the Administrative Procedure Act and that the ''totality of the evidence'' language in the 2017 final rule was a new and unsupported legal standard.

In the **Federal Register** of March 20, 2017 (82 FR 14319), FDA further delayed the effective date of the final rule until March 2018 and opened the docket for additional public comment. Following some comments supporting the delay and proposing specific changes to the language in §§ 201.128 and 801.4, on March 16, 2018 (83 FR 11639), FDA delayed the amendments to §§ 201.128 and 801.4 until further notice. This proposed rule adopts the general approach set forth in the September 2015 proposed rule by deleting the final sentence; the proposed rule also clarifies FDA's interpretation and application of evidence relevant to determining intended use.

2. Benefits of the Proposed Rule

The proposed rule clarifies FDA's existing interpretation of the determination of the intended use of drugs and devices. This clarification should reduce manufacturer and stakeholder uncertainty regarding the scenarios in which specific types of evidence may or may not show a product is intended for a drug or device use. Removal of the final sentence in §§ 201.128 and 801.4 and the inclusion of a new clarifying clause (''provided, however, that a firm would not be regarded as intending an unapproved new use for an [approved or cleared medical product] based solely on that firm's knowledge that such [product] was being prescribed or used by health care providers for such use'') eliminate any question about whether manufacturers need to think about developing an action plan or strategy related to a potential new intended use of their approved or cleared medical

products due merely to knowledge of unapproved uses of these products by third parties. We believe this clarification is the benefit of the proposed rule; we request comment on this assumption.

3. Costs of the Proposed Rule

The proposed rule is not expected to impose significant additional costs on manufacturers and distributors of FDA-regulated products. The proposed rule does not extend FDA's regulatory authority to any new or additional products, nor does the rule change the current approach to evaluating intended use or impose any additional requirements on manufacturers or distributors. We do not have any reason to believe firms will change their marketing or operating procedures as a result of this rule. We request comment on this assumption. We do not have evidence that this proposed rule would impose costs on currently marketed products. We request comment on this assumption.

C. Initial Small Entity Analysis

In table 2, we describe the Small Business Administration's size thresholds for industries affected by the proposed rule. Based on U.S. Census data, at least 22.9% of businesses in NAICS code 21323 (Tobacco Manufacturing) are considered small; at least 17.5% of businesses in NAICS code 32541 (Pharmaceutical and Medicine Manufacturing) are considered small; and at least 32.6% of businesses in NAICS code 33911 (Medical Equipment and Supplies Manufacturing) are considered small. Because the proposed rule is not expected to impose costs on manufacturers or distributors of FDA-regulated products, the proposed rule is also not expected to impose costs on small entities. Therefore, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

TABLE 2—SMALL BUSINESS ADMINISTRATION SIZE STANDARDS FOR AFFECTED INDUSTRIES

NAICS code	Industry description	Small business threshold
312230	Tobacco Manufacturing	Fewer than 1,500 Employees.
325411	Medicinal and Botanical Manufacturing	Fewer than 1,000 Employees.
325412	Pharmaceutical Preparation Manufacturing	Fewer than 1,250 Employees.
325413	In-vitro Diagnostic Substance Manufacturing	Fewer than 1,250 Employees.
325414	Biological Product (except Diagnostic) Manufacturing	Fewer than 1,250 Employees.
339112	Surgical and Medical Instrument Manufacturing	Fewer than 1,000 Employees.
339113	Surgical Appliance and Supplies Manufacturing	Fewer than 750 Employees.
339114	Dental Equipment and Supplies Manufacturing	Fewer than 750 Employees.
339115	Ophthalmic Goods Manufacturing	Fewer than 1,000 Employees.
339116	Dental Laboratories	Fewer than 500 Employees.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Plaintiff's Memorandum of Law at 38–40, *Allergan Inc.* v. *United States,* 1:09–cv–01879–JDB (D.D.C. January 15, 2010).
2. Complaint at ¶¶ 35–37, *Par Pharmaceutical Inc.* v. *United States,* 1:11–cv–01820 (D.D.C. October 10, 2011).
3. Citizen Petition from the Medical Information Working Group at 18, FDA–2013–P–1079 (Sept. 3, 2013).
4. Memorandum for the Heads of Executive Departments and Agencies, from Reince Priebus, Assistant to the President and Chief of Staff, ''Regulatory Freeze Pending Review,'' January 20, 2017 (available at *https://www.whitehouse.gov/presidential-actions/memorandum-heads-executive-departments-agencies/*), accessed February 5, 2020.
5. FDA, Guidance for Industry, ''Medical Product Communications That Are Consistent With the FDA-Required Labeling—Questions and Answers,'' June 2018 (available at *https://www.fda.gov/media/102575/download*), accessed February 5, 2020.
6. FDA, Guidance for Industry and Review Staff, ''Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities—Questions and Answers,'' June 2018 (available at *https://www.fda.gov/media/102683/download*), accessed February 5, 2020.
7. FDA, Guidance for Industry, ''Industry-Supported Scientific and Educational Activities,'' December 1997 (available at

https://www.fda.gov/media/70844/download), accessed February 5, 2020.
8. FDA, Draft Guidance for Industry, ''Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices,'' February 2014 (available at *https://www.fda.gov/media/88031/download*), accessed February 5, 2020.
9. FDA, Draft Guidance for Industry, ''Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices,'' December 2011 (available at *https://www.fda.gov/media/82660/download*), accessed February 5, 2020.
10. Eguale, T., D.L. Buckeridge, A. Verma, et al., ''Association of Off-Label Drug Use and Adverse Drug Events in an Adult Population,'' *Journal of American Medical Association Internal Medicine,* 176(1):55–63, 2016.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR parts 201 and 801 be amended as follows:

PART 201—LABELING

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 343, 351, 352, 353, 355, 358, 360, 360b, 360ccc, 360ccc–1, 360ee, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Revise § 201.128 to read as follows:

§ 201.128 Meaning of intended uses.

The words *intended uses* or words of similar import in §§ 201.5, 201.115, 201.117, 201.119, 201.120, 201.122, and 1100.5 of this chapter refer to the objective intent of the persons legally responsible for the labeling of an article (or their representatives). The intent may be shown by such persons' expressions, the design or composition of the article, or by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. Objective intent may be shown, for example, by circumstances in which the article is, with the knowledge of such persons or their representatives, offered or used for a purpose for which it is neither labeled nor advertised; provided, however, that a firm would not be regarded as intending an unapproved new use for an approved drug based solely on that firm's knowledge that such drug was being prescribed or used by health care providers for such use. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he or she received the article, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses.

PART 801—LABELING

■ 3. The authority citation for part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360d, 360i, 360j, 371, 374.

■ 4. Revise § 801.4 to read as follows:

§ 801.4 Meaning of intended uses.

The words *intended uses* or words of similar import in §§ 801.5, 801.119, 801.122, and 1100.5 of this chapter refer to the objective intent of the persons legally responsible for the labeling of an article (or their representatives). The intent may be shown by such persons' expressions, the design or composition of the article, or by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. Objective intent may be shown, for example, by circumstances in which the article is, with the knowledge of such persons or their representatives, offered or used for a purpose for which it is neither labeled nor advertised; provided, however, that a firm would not be regarded as intending an unapproved new use for an approved or cleared device based solely on that firm's knowledge that such device was being prescribed or used by health care providers for such use. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he or she received the article, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses.

Dated: September 8, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–20437 Filed 9–22–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0418; FRL–10013–74–Region 9]

Air Quality Implementation Plan; California; Northern Sierra Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD or ''District'') portion of the California State Implementation Plan (SIP). In this action, we are proposing to approve a rule submitted by the NSAQMD that governs the issuance of permits for stationary sources, which focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and a final action will follow.

DATES: Written comments must be received on or before October 23, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0418 at *https://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For

additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947–4174, or by email to *batchelder.amber@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal, including the date on which it was adopted by the District and the date on which it was submitted to the EPA by the California Air Resources Board (CARB or ''the State''). The Northern Sierra Air Quality Management District (NSAQMD) is the air pollution control agency for Nevada, Sierra, and Plumas Counties.

TABLE 1—SUBMITTED RULES

District	Rule No.	Rule title	Adopted	Submitted[1]
NSAQMD	428	NSR Requirements for New and Modified Major Sources in Non-attainment Areas.	11/25/19	02/19/20

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District's NNSR permit program applicable to new and modified major sources located in areas within the District that are designated nonattainment for any NAAQS for ozone or particulate matter equal to or less than 2.5 micrometers ($PM_{2.5}$).

We find that the submittal for Rule 428 meets the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of NSAQMD Rule 428 in the California SIP.

C. What is the purpose of the submitted rule?

NSAQMD Rule 428 is intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors.

[1] The submittal was transmitted to the EPA via a letter from CARB dated February 6, 2020.

II. The EPA's Evaluation

A. What is the background for this proposal?

Because a part of Nevada County(''the western part'') is a federal ozone nonattainment area and part of Plumas County (''the Portola area'') is a federal $PM_{2.5}$ nonattainment area,[2] the CAA requires the NSAQMD to have a SIP-approved NNSR program for new and modified major sources in the ozone and $PM_{2.5}$ nonattainment areas that are under its jurisdiction. Below, we provide the area's nonattainment designation history for the ozone and $PM_{2.5}$ NAAQS, which forms the basis for the District's NNSR program needed to satisfy the NNSR requirements applicable to Serious ozone nonattainment areas and Moderate $PM_{2.5}$ nonattainment areas.

On July 18, 1997, the EPA issued a final rule revising the primary and secondary NAAQS for ozone to establish new 8-hour standards of 0.08 ppm.[3] On April 30, 2004, the EPA issued a final rule designating the western part of Nevada County as nonattainment for the 1997 8-hour ozone NAAQS.[4] On May 14, 2012, this area was reclassified as Moderate nonattainment for the 1997 ozone NAAQS.[5] On December 3, 2012, the EPA issued a final rule that determined that the western part of Nevada County had attained the 1997 ozone NAAQS by the extended attainment date.[6]

On March 27, 2008, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.075 ppm.[7] On May 21, 2012, the EPA issued a final rule designating the western part of Nevada County as nonattainment for the 2008 8-hour ozone NAAQS, with a Marginal classification.[8] On May 4, 2016, the EPA issued a final rule that determined that the western part of Nevada County had not attained the 2008 ozone NAAQS by the attainment date and was therefore reclassified as a Moderate nonattainment area.[9] On August 23, 2019, the EPA issued a final rule that determined that the western part of Nevada County had not attained the 2008 ozone NAAQS by the attainment date and was therefore reclassified as a Serious ozone nonattainment area.[10]

On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm.[11] On June 4, 2018, the EPA issued a final rule designating the western part of Nevada County as nonattainment for the 2015 8-hour

[2] While the NSAQMD includes all of Nevada, Sierra, and Plumas Counties, only the western part of Nevada County is nonattainment for ozone, and only a specific part of Plumas County is nonattainment for $PM_{2.5}$. See 40 CFR part 81.305.

[3] 40 CFR 50.10; see 62 FR 38856, 38894–38895.

[4] 69 FR 23858, 23889.

[5] 77 FR 28424; see also 77 FR 43521 (July 25, 2012); 40 CR 81.305.

[6] 77 FR 71551.

[7] 40 CFR 50.15; see 73 FR 16436, 16511.

[8] 77 FR 30088, 30103.

[9] 81 FR 26697.

[10] 84 FR 44238; see 40 CFR 81.305.

[11] 40 CFR 50.19; see 80 FR 65292, 65452–53.

ozone NAAQS, with a Moderate classification.[12]

On January 15, 2013, the EPA issued a final rule revising the NAAQS for $PM_{2.5}$, reducing the primary annual standard to 12.0 micrograms per cubic meter.[13] On January 15, 2015, the EPA issued a final rule designating the Portola area as nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS, with a Moderate classification.[14]

The designations of the western part of Nevada County as a federal ozone nonattainment area and the Portola area as a federal $PM_{2.5}$ nonattainment area triggered the requirement for the NSAQMD to develop and submit an NNSR program to the EPA for approval into the California SIP.[15] The District's NNSR program must satisfy the NNSR requirements applicable to Moderate $PM_{2.5}$ nonattainment areas and Serious ozone nonattainment areas, as these are the highest $PM_{2.5}$ and ozone nonattainment classifications to which the District is subject.[16]

On February 19, 2020, CARB submitted to the EPA for SIP approval, via correspondence dated February 6, 2020, NSAQMD Rule 428, ''NSR Requirements for New and Modified Major Sources in Nonattainment Areas,'' which was adopted by the District on November 25, 2019.

B. How is the EPA evaluating the rule?

The EPA reviewed NSAQMD Rule 428 for compliance with CAA requirements for: (1) Stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Serious ozone and Moderate $PM_{2.5}$ nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal Area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);[17] and (5) SIP revisions as set forth in CAA section 110(l)[18] and 193.[19] Our review evaluated the submittals for compliance with the NNSR requirements applicable to nonattainment areas designated Serious for ozone and nonattainment areas designated Moderate for $PM_{2.5}$, and ensured that the submittals addressed the NNSR requirements for the 1997, 2008 and 2015 ozone NAAQS, and the 2012 Annual $PM_{2.5}$ NAAQS.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the February 19, 2020 submittal of NSAQMD Rule 428, we find that the NSAQMD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160–51.165, we have evaluated NSAQMD Rule 428 in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone and $PM_{2.5}$ NAAQS, including the 2015 ozone NAAQS. We find that NSAQMD Rule 428 satisfies these requirements as they apply to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Serious and $PM_{2.5}$ nonattainment areas classified as Moderate. We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 428 satisfies the requirement in CAA section 110(a)(2)(A) that requires regulations submitted to the EPA for SIP approval to be clear and legally enforceable, and have determined that the submittal demonstrates in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under state law to carry out these proposed SIP revisions.

Our Technical Support Document, which can be found in the docket for this rule, contains a more detailed discussion of our analysis of Rule 428.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rule because it fulfills all relevant CAA requirements. We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160–51.165 and 40 CFR 51.307.

In support of this proposed action, we have concluded that our action would comply with section 110(l) of the Act because approval of NSAQMD Rule 428 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 428 will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone, $PM_{2.5}$, and their respective precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

We will accept comments from the public on this proposal until October 23, 2020.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available electronically through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[12] 83 FR 25776, 25788; see 40 CFR 81.305.

[13] 40 CFR 50.18; see 78 FR 3086, 3277.

[14] 80 FR 2206, 2218; see 40 CFR 81.305.

[15] 40 CFR 51.1003(a)(1), 51.1100(o)(14), 51.1105(a) and (f), 51.1114, 51.1314. We note that, as a result of the EPA's determination that an area has attained a NAAQS by the attainment date, those SIP elements related to attaining the NAAQS are suspended for so long as the area continues to attain the standard; however, the requirement for an NNSR program is not one of the SIP elements suspended as a result of such a determination. See, *e.g.,* 40 CFR 51.1118.

[16] See 40 CFR 51.1003(a)(1), 51.1105(f), 51.1114.

[17] CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

[18] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[19] CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 28, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–19587 Filed 9–22–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0062; FXES11130900000–189–FF0932000]

RIN 1018–BD02

Endangered and Threatened Wildlife and Plants; Removal of the Nashville Crayfish From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), proposed to remove the Nashville crayfish (*Orconectes shoupi*) from the Federal List of Endangered and Threatened Wildlife (List). This determination is based on the best available scientific and commercial data, which indicate that the threats to the species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act). We announced a 60-day public comment period on the proposed rule, ending January 27, 2020. We now reopen the public comment period on the proposed rule to allow all interested parties additional time to comment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We also announce a public informational meeting and public hearing on the proposed rule.

DATES:

Written comments: The comment period on the proposed rule that published November 26, 2019 (84 FR 65098), is reopened. We will accept comments received or postmarked on or before October 23, 2020. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date, and comments submitted by U.S. mail must be postmarked by that date to ensure consideration.

Public informational meeting and public hearing: On October 8, 2020, we will hold a public informational meeting from 6 to 7 p.m., Central Time, followed by a public hearing from 7 to 8:30 p.m., Central Time.

ADDRESSES:

Availability of documents: You may obtain copies of the November 26, 2019, proposed rule and associated documents on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062.

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0062, which is the docket number for the proposed rule. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!'' Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2018–0062, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street St., Cookeville, TN 38506; telephone 931–528–6481. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 2019, we published a proposed rule (84 FR 65098) to remove the Nashville crayfish from the List (*i.e.,* ''delist'' the species). The proposed rule had a 60-day public comment period, ending January 27, 2020. During the comment period for the proposed rule, we received a request for a public hearing. We are, therefore, reopening the comment period for 30 days on our proposed rule to delist the Nashville crayfish (see **DATES**, above) to hold a public informational meeting and a public hearing and to allow the public an additional opportunity to provide comments on the proposed rule.

For a description of previous Federal actions concerning the Nashville crayfish, please refer to the November 26, 2019, proposed rule (84 FR 65098).

Public Comments

We will accept comments and information during this reopened comment period on our proposed rule to delist the Nashville crayfish. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during all comment periods on the proposed rule. Therefore, the final decision may differ from the November 26, 2019, proposed rule (84 FR 65098), based on our review of all information we receive during the comment periods. For example, we may conclude that the species should remain listed as an endangered species instead of being removed from the List, or we may conclude that the species should be reclassified as a threatened species. Such final decisions would be a logical outgrowth of the proposal, as long as we: (a) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

If you already submitted comments or information on the November 26, 2019, proposed rule (84 FR 65098), please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. You may also provide your comments through verbal testimony during the public hearing (see **DATES**, **ADDRESSES**, and Public Hearing in this document).

If you submit information via *http://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0062.

Public Hearing

We have scheduled a public informational meeting and public hearing on our November 26, 2019, proposed rule to delist the Nashville crayfish (84 FR 65098). We will hold the public informational meeting and public hearing on the date and at the times listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *http://www.fws.gov/cookeville/.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding the November 26, 2019, proposed rule to delist the Nashville crayfish (84 FR 65098). While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not; it is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, U.S. mail, or hand-delivery (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing (*http://www.fws.gov/cookeville/*). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Reasonable Accommodation

The Service is committed to providing access to the public informational meeting and public hearing for all participants. Closed captioning will be available during the public informational meeting and public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at *http://www.fws.gov/cookeville/* after the hearing. Participants will also have access to live audio during the public informational meeting and public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the meeting and/or hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the meeting and hearing to help ensure availability. An accessible version of the Service's public informational meeting presentation will also be posted online at *http://www.fws.gov/cookeville/* prior to the meeting and hearing (see **DATES**, above). See *http://www.fws.gov/cookeville/* for more information about reasonable accommodation.

Authors

The primary authors of this document are the Ecological Services staff of the Southeast Regional Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–20158 Filed 9–22–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 85, No. 185
Wednesday, September 23, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0083]

Availability of a Final Environmental Assessment and Finding of No Significant Impact for Cogongrass Control Efforts in Alabama, Georgia, Mississippi, and South Carolina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a final environmental assessment and finding of no significant impact relative to establishing an integrated management strategy to control cogongrass, a noxious weed, in Alabama, Georgia, Mississippi, and South Carolina. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Ms. Anne LeBrun, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737; (301) 851–2259; email: *anne.lebrun@usda.gov.*

SUPPLEMENTARY INFORMATION:

Cogongrass (*Imperata cylindrica*) is an invasive, exotic perennial grass that is naturalized throughout the southeastern United States. Cogongrass grows in both natural and disturbed areas, including around homes, on public properties, paved and unpaved roadways, forestland, stream banks, and farmland. It spreads rapidly, reducing forest productivity, harming wildlife habitat and native ecosystems, encroaching in pasture and hayfields, and impacting rights-of-way. It usually grows in warm or tropical areas and is widely distributed on all continents except Antarctica.

While it is unlikely that cogongrass can be eliminated from the southeastern United States, active control and eradication of cogongrass along the edge of the naturalized distribution area is possible through an integrated management strategy employing preventative, cultural, mechanical, biological, and chemical methods.

On March 2, 2020, we published in the **Federal Register** (85 FR 12250, Docket No. APHIS–2019–0083) a notice [1] in which we announced the availability, for public review and comment, of a draft programmatic environmental assessment (EA) that examined the potential environmental impacts associated with establishing an integrated management strategy to control cogongrass, a noxious weed, in Alabama, Georgia, Mississippi, and South Carolina.

We solicited comments on the EA for 30 days ending April 1, 2020. We received 11 comments by that date. The comments addressed several topics of concern and were submitted by representatives of State forestry offices, forest landowner organizations, and the public. Comments and our responses to them are addressed in Appendix 1 of the final EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the establishment of an integrated management strategy to control cogongrass. The finding, which is based on the final EA, reflects our determination that the methods used as part of the integrated management strategy will not have a significant impact on the quality of the human environment.

The final EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the final EA and FONSI are also available for public inspection at the U.S. Department of Agriculture (USDA), Room 1620, South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The final EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) the Animal and Plant Health Inspection Service's NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this day of September 16, 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–20946 Filed 9–22–20; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, supporting document, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0083.*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on Tuesday, October 6, 2020. The purpose of the meeting is to continue working on its project on health care disparities during the COVID–19 pandemic. The Committee will hear from advocates and others on the topic.

DATES: Tuesday, October 6, 2020, at 12:00 p.m. (EDT).

Public Call-in Information: 1–866–575–6539 and conference ID: 3918108.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–575–6539 and conference ID: 3918108. Please be advised that before placing them into the conference call, the conference call operator will ask callers

to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–866–575–6539 and conference ID: 3918108.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at this FACA Link, click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda

Tuesday, October 6, 2020; 12:00 p.m. (EDT)

- Rollcall
- Briefing on COVID Health Disparities
- Open Comment
- Other Business
- Adjournment

Dated: September 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–20989 Filed 9–22–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings From Italy: Rescission of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy for the period February 1, 2019, through January 31, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable September 23, 2020.

FOR FURTHER INFORMATION CONTACT: John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy for the period of review covering February 1, 2019, through January 31, 2020.[1] On February 28, 2020, Core Pipe Products, Inc., and Taylor Forge Stainless Inc. (the petitioners) filed a timely request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of Filmag Italia, SpA.[3] On July 6, 2020, the petitioners filed a timely withdrawal of request for the administrative review.[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 5938 (February 3, 2020).

[2] *See* Petitioners' Letter, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Petitioners' Request for 2019/2020 Administrative Review,'' dated February 28, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020).

[4] *See* Petitioners' Letter, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Petitioners' Withdrawal of Review Request for 2019/2020 Administrative Review,'' dated July 6, 2020.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners, the only party to file a request for review, withdrew the sole review request within the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy covering February 1, 2019 through January 31, 2020, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of stainless steel butt-weld pipe fittings from Italy. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 18, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–21007 Filed 9–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA389]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Washington State

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to the Washington State Department of Transportation (WSDKT) to incidentally harass, by Level A and Level B harassment, marine mammals during construction associated to Seattle Multimodal Project at Colman Dock in Seattle, Washington State.

DATES: This Authorization is effective from September 10, 2020, through September 9, 2021.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On April 21, 2020, NMFS received a request from WSDOT for an Incidental Harassment Authorization (IHA) to take marine mammals incidental to the fourth year of work associated with the Seattle Multimodal Project at Colman Dock in Seattle, Washington. The application was deemed adequate and complete on May 13, 2020. WSDOT's request is for take of a small number of 11 species of marine mammals by Level A and Level B harassment. Neither WSDOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This IHA covers one year of a larger project for which WSDOT obtained prior IHAs (82 FR 31579, July 7, 2017; 83 FR 35226, July 25, 2018; 84 FR 36581, July 29, 2019). The project will reconfigure the dock while maintaining approximately the same vehicle holding capacity as current conditions. WSDOT complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section. WSDOT's previous monitoring reports are available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Description of Proposed Activity

Overview

The purpose of the Seattle Multimodal Project at Colman Dock is to preserve the transportation function of an aging, deteriorating and seismically deficient facility to continue providing safe and reliable service. The project will also address existing safety concerns related to conflicts between vehicles and pedestrian traffic and operational inefficiencies.

Key project elements include:

- Replacing and re-configuring the timber trestle portion of the dock;
- Replacing the main terminal building;
- Reconfiguring the dock layout to provide safer and more efficient operations;
- Replacing the vehicle transfer span and the overhead loading structures of Slip 3;
- Replacing vessel landing aids;
- Maintaining a connection to the Marion Street pedestrian overpass;
- Moving the current passenger only ferry (POF) slip temporarily to the north to make way for south trestle construction, and then constructing a new POF slip in the south trestle area.
- Mitigating for additional 5,400 square feet (ft^2) (502 square meters (m^2)) of overwater coverage; and
- Capping contaminated sediments.

The Seattle Multimodal Project at Colman Dock involves in-water impact and vibratory pile driving and vibratory pile removal. Details of the proposed construction activities are provided below.

Dates and Duration

Due to NMFS and U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, planned WSDOT in-water construction is limited each year to July 15 through February 15 at this location. For this project, in-water construction is planned to take place between August 1, 2020 and February 15, 2021. The total worst-case time for pile installation and removal is 47 days (Table 1).

Specific Geographic Region

The Seattle Ferry Terminal at Colman Dock, serving State Route 519, is located on the downtown Seattle waterfront, in King County, Washington. The terminal services vessels from the Bainbridge Island and Bremerton routes, and is the most heavily used terminal in the WSF system. The Seattle terminal is located in Section 6, Township 24 North, Range 4 East, and is adjacent to Elliott Bay, a tributary to Puget Sound (Figure 1).

Land use in the area is highly urban, and includes business, industrial, the Port of Seattle container loading facility, residential, the Pioneer Square Historic District and local parks.

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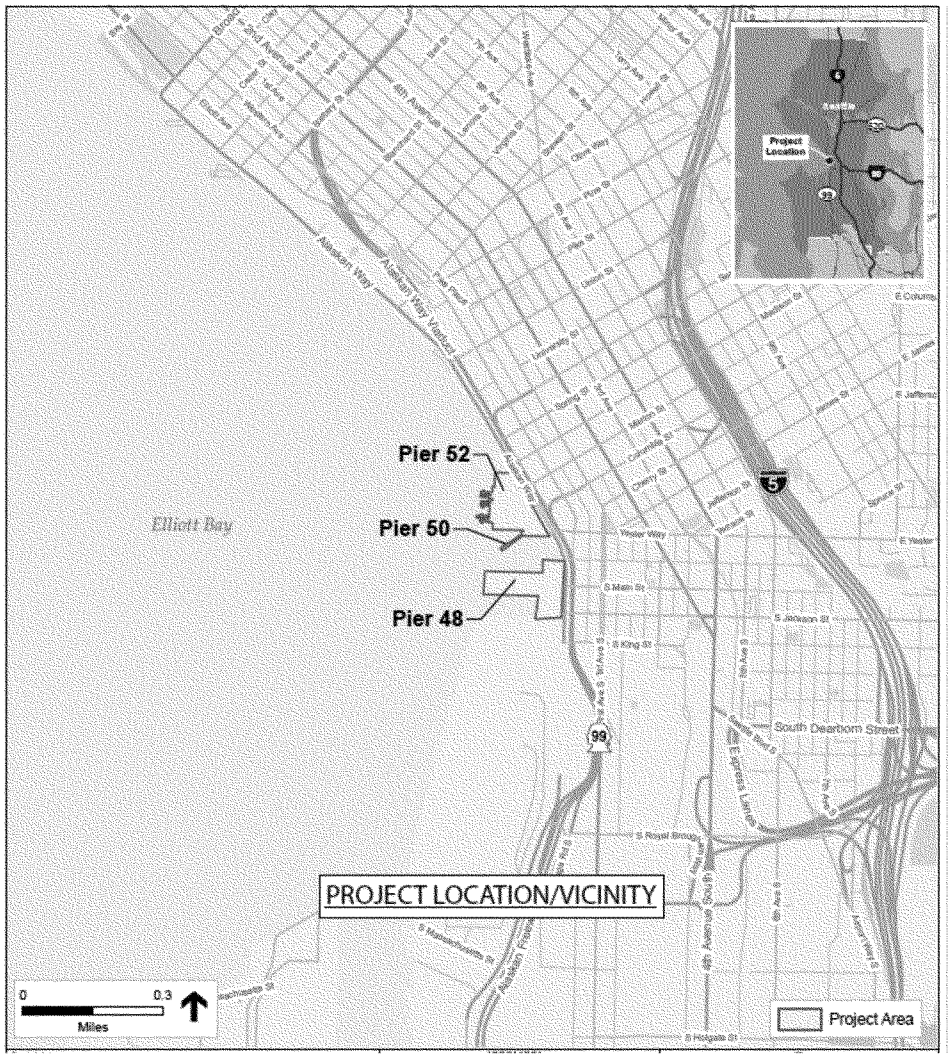

Figure 1 -- Location of Seattle Ferry Terminal at Colman Dock

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Detailed Description of Specific Activity

Construction activities during the Year 4 Seattle Multimodal Project at Colman Dock include the following components.

The project will remove the northern timber trestle and replace a portion of it with a new concrete trestle. The area from Marion Street to the north edge of the property will not be rebuilt and after demolition will become a new area of open water. A section of fill contained behind a bulkhead underneath the northeast section of the dock will be removed. WSDOT will construct a new steel and concrete trestle from Columbia Street northward to Marion Street.

The project will maintain the current King County POF functions on site, and address safety concerns related to pedestrian/vehicle conflicts at Yesler Street. A new covered pier, sized to accommodate POF passenger waiting and connected by a new overhead pedestrian bridge to the terminal building and the Marion Street Overpass, will be constructed along the south side of Colman Dock.

The reconfiguration will increase total permanent overwater coverage (OWC) by about 5,400 ft^2 (502 m^2, about 1.7 percent more than existing overwater coverage at the site), due to the new walkway from the POF facility to Alaskan Way and new stairways and elevators from the POF to the upper level of the terminal. Removal of at least 5,400 ft^2 (502 m^2) from Pier 48, a condemned timber structure, will serve as mitigation for the permanent OWC increase.

Construction of the reconfigured dock will narrow (reduce) the OWC along the shoreline (at the landward edge) by 180 linear feet (ft) at the north end of the site, while 30 linear ft (9.14 m) of new trestle will be constructed along the shoreline at the south end of the site. The net reduction of OWC in the nearshore zone is 150 linear ft (45.72 m).

The project includes demolition of the existing terminal building and construction of a new terminal building. The new terminal building will be located along the west edge of the dock, spanning all three slips to handle passenger traffic more efficiently, and will connect to the Marion Street Overpass by an elevated deck.

The project includes reconstruction of the vehicle transfer span and the passenger overhead loading (OHL) structures of Slip 3, including new hydraulic systems. The new OHL will be wider than the existing OHL, to accommodate the increased walk-on passenger volumes.

Sediment beneath the terminal has been contaminated by the creosote-treated piles and other chemicals discharged to the environment over the years. A cap was installed to cover contaminated sediment on the south half of the site prior to trestle expansion in 1990. WSDOT will place a new sediment cap to the north and south of the current cap during construction of the project to contain existing contamination.

Specific in-water pile driving and pile removal activities include the following components:

- Vibratory driving followed by impact proofing (driving) of 36-inch steel piles. A total of 73 piles will be installed using the vibratory hammer over 9 days, with an average of approximately 8 piles installed per day. Vibratory pile driving and impact proofing will occur on different days, and an additional nine days is estimated for impact proofing.
- Vibratory driving and then removal of 24-inch temporary steel piles. A total of 30 piles will be installed and later removed, with an average of 8 piles installed/removed per day. Vibratory pile driving and removal will occur on different days.
- Vibratory removal of 355 14-inch timber piles over 18 days, with approximately 20 piles removed per day.
- Vibratory removal of 30 12-inch steel piles over 3 days, with 10 piles removed per day.

A summary of the pile driving and pile removal activities for the Year 4 Seattle Multimodal Project at Colman Dock is provided in Table 1.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING DURATIONS

Method	Pile type	Pile size (inch)	Pile number	Piles/day	Minutes/pile	Duration (days)
Impact drive (proof)	Steel	36	*73	8	10	9
Vibratory drive	Steel	36	*73	8	20	9
Vibratory drive	Steel (temporary)	24	*30	8	20	4
Vibratory remove	Steel (temporary)	24	*30	8	20	4
Vibratory remove	Timber	14	355	20	15	18
Vibratory remove	Steel	12	30	10	20	3
Total			488			47

*These are same piles

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on July 8, 2020 (85 FR 40992). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses are provided below.

Comment 1: The Commission points out that the noise levels of the 36-inch pile impact driving at 11 m from the source was used, instead of 10 m, thus resulted in a underestimated Level A harassment and Level B harassment zones for the 36-inch pile. The Commission also suggested a few changes to take estimates based on the newly available monitoring data. The Commission recommends that NMFS (1) include the revised Level A harassment zones and shut-down zones for impact installation of 36-in steel piles, and (2) revise the Level B harassment takes to 752 for harbor porpoises, 35 for Dall's porpoises, 7 for gray whales, and 141 for Steller sea lions and revise the Level A harassment takes to 21 for harbor porpoises.

Response: NMFS recalculated the ensonified areas for Level A and Level B harassment using the noise levels measured at 11 m from the 36-inch steel pile impact driving measurements. The revised Level A and Level B harassment zones and shutdown zones are provided in Table 6 and Table 9, respectively.

NMFS further agrees with the Commission on revising some of the Level B harassment take numbers. Specifically, harbor porpoise Level B harassment take is revised from 649 to 442 based on updated density estimate; Dall's porpoise Level B harassment take is revised from 40 to 35, based on its group size of 5 animals over the 7 months activity period; gray whale Level B harassment take is revised from 5 to 7, based on an assumption of 1 take per month during the 7 months construction window; and Steller sea lion Level B harassment take is revised from 39 to 141, based on an average of 3 takes per day over the 47 days of construction. The updated take numbers are provided in Table 8 below.

Comment 2: The Commission points out that WSDOT's monitoring report for 2019–2020 activities did not include the basic information (*e.g.,* distance from the pile to the animal and total number of each species taken, including a correction factor as appropriate) that was required to be reported under the final authorization (*e.g.,* conditions 6(a)(vii) and (ix), respectively). The Commission recommends that NMFS (1) reinforce that WSDOT must comply with the various reporting requirements in the final authorization, including condition 6(a)(vii), (2) include the standard requirement that WSDOT extrapolate the observed numbers of takes to the extents of the Level B harassment zones when estimating the total numbers of takes and by considering both the observation platform of each Protected Species Observer (PSO) and the species for the 2020 final authorization, and (3) require WSDOT to submit a revised monitoring report for its 2019–2020 activities, consistent with conditions 6(a)(ix) and (xi) in the 2019 final authorization and the recommendations herein.

Response: Conditions 6(a)(vii), 6(a)(ix), and 6(a)(xi) of the 2019–2020 IHA to WSDOT's Seattle Multimodal Project at Colman Dock required WSDOT to submit a final report that includes the following information:

(vii). Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting.

(ix). Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate).

(xi). Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

NMFS is reminding WSDOT that it must comply with these conditions to include distances and bearing of marine mammals observed during pile driving, information on numbers of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and description of attempts to distinguish between the number of individuals taken and the number of incidences of take during marine mammal monitoring, as it appears that this information was not included in its final report for the 2019 season. NMFS has contacted WSDOT this information.

Comment 3: The Commission recommends that NMFS include in the final authorization the requirement that WSDOT conduct pile-driving and -removal activities during daylight hours only.

Response: NMFS agrees with the Commission and has included the requirement that WSDOT conduct pile driving and removal activities during daylight hours only. This requirement was in the **Federal Register** for the proposed IHA.

Comment 4: The Commission recommends that NMFS reinforce that WSDOT must keep a running tally of the total takes, based on observed and extrapolated takes, for Level B harassment.

Response: We agree that WSDOT must ensure they do not exceed authorized takes. As described in the monitoring and reporting requirements, WSDOT is required to keep a running tally of the marine mammals observed within harassment zones and, further, they are required to estimate the number of takes in their final report (applying a correction as appropriate).

Comment 5: Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies.

Response: In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

Changes From the Proposed IHA to Final IHA

There is no change in the WSDOT's Seattle Multimodal Project at Colman Dock construction activities from the **Federal Register** notice for the proposed IHA (85 FR 40992; July 8, 2020).

There was an error on the noise level for the 36-inch impact pile driving reported in the proposed IHA. The single strike sound exposure level (SEL_{ss}) of 174 decibel in reference to 1 micropascal-second (dB re 1 μPa^2s) is based on measurement conducted at 11 m, not 10 m. The corrected 10-m SEL_{ss} is 175 dB re 1 μPa^2s, and is reflected in Table 5 of this document. This correction also resulted in larger Level A harassment distances and some of the shutdown distances. The revised Level A distances are presented in Table 6 and Table 9 of this document, respectively.

Additionally, numbers of Level B harassment take of several marine mammal species are also updated based on the updated density estimate or the most recent marine mammal monitoring report. Specifically, harbor porpoise Level B harassment take is revised from 649 to 442 based on updated density estimate of 0.54 porpoises/square kilometer (km^2) (updated in Table 7 below); Dall's porpoise Level B harassment take is revised from 40 to 35, based on its group size of 5 animals over the 7 months activity period; gray whale Level B harassment take is revised from 5 to 7, based on an assumption of 1 take per month during the 7 months construction window; and Steller sea lion Level B harassment take is revised from 39 to 141, based on an average of 3 takes per day over the 47 days of construction. The updated take numbers are provided in Table 8 below.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for all species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in this region are assessed in NMFS's U.S Pacific and Alaska SARs (*e.g.,* Carretta *et al.,* 2020; Muto *et al.,* 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	26,960 (0.05, 25,849)	801	139
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	2,900 (0.05, 2,784)	16.7	unk
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636 (0.72, 369)	3.5	1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	Y	75 (NA, 75)	0	0
		West coast transient	N	243 (NA, 243)	2.4	0
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	N	1,924 (0.54, 1,255)	11	1.6
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233 (0.37, 8,308)	66	7.2
Dall's porpoise	*P. dalli*	California/Oregon/Washington	N	25,750 (0.45, 17,954)	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	N	257,606 (NA, 233,515)	14,011	321
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	N	43,201 (NA, 43,201)	2,592	113
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	11,036 [4]	NA	10.6
Northern elephant seal	*Mirounga angustirostris*	California breeding	N	179,000 (NA, 81,368)	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual serious injury/mortality often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 9 years old, but this is the best available information for use here.

As indicated above, all 11 species (with 12 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it, with the exception of the Southern Resident killer whale (SPKW). Take of SRKW can be avoided by implementing strict monitoring and mitigation measures (see Mitigation and Monitoring and Reporting sections below). All species that could potentially occur in the project areas are included in Table 2 of the IHA application.

In addition, the sea otter may be found in inland waters of Washington. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

A detailed description of the marine mammals in the area of the activities is found in the notice of the Year 3 Seattle Multimodal Project at Colman Dock proposed IHA (84 FR 25757, June 4, 2019). This information remains valid so we do not repeat it here but provide a summary table with marine mammal species and stock details (Table 2).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 11 marine mammal species (7 cetacean and 4 pinniped (2 otariid and 2 phocid) species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to Table 2. Of the cetacean species that may be present, 3 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 2 are classified as mid-frequency cetaceans (*i.e.,* all delphinid species), and 2 are classified as high-frequency cetaceans (*i.e.,* porpoise species).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The WSDOT's Seattle Multimodal Project at Colman Dock construction work using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

A detailed description on the noise impacts on marine mammals and their habitat is provided in the **Federal Register** notice (85 FR 40992; July 8, 2020) for the proposed IHA, and is not repeated here.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from in-water impact and vibratory pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans and phocids because predicted auditory injury zones are relatively large. Auditory injury is unlikely to occur for low- and mid-frequency cetaceans and otariids. The prescribed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally

harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (root-mean-square (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

WSDOT's Seattle Multimodal Project at Colman Dock Year 4 construction activity includes the use impact pile driving, vibratory pile driving and pile removal, and therefore the 120 dB and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WSDOT's Seattle Multimodal Project at Colman Dock Year 4 construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Source Levels

The project includes impact pile driving (proofing) of 36-inch steel piles, vibratory pile driving of 36- and 24-inch steel piles, and vibratory pile removal of 24- and 12-inch steel piles, and 14-inch timber piles. Near source levels (defined as noise level at 10-m from the pile) of these pile driving and removal activities are all based on prior measurements conducted by WSDOT. A summary of the 10-m near source levels of the pile driving and removal activities is provided in Table 5, along with references.

TABLE 5—NEAR SOURCE NOISE LEVELS AT 10-m FROM THE PILE FOR VARIOUS PILE DRIVING AND REMOVAL AT SEATTLE MULTIMODAL PROJECT AT COLMAN DOCK YEAR 4 PROJECT

Activity/pile size	Source level (at 10 m)	Literature source
Impact pile drive (proof) 36 inch steel pile	175 dB (SELss)	WSDOT Colman Year 1 measurement (2018).
Vibratory drive/remove 36 inch steel pile	177 dB (SPLrms)	WSDOT Port Townsend measurement (2010).
Vibratory drive 24 inch steel pile	174 dB (SPLrms)	WSDOT Port Townsend measurement (2010).
Vibratory removal 14 inch timber pile [1]	155 dB (SPLrms)	WSDOT Port Townsend measurement (2011).
Vibratory removal 12 inch steel pile [2]	155 dB (SPLrms)	Caltrans (2015) data for same pile.

[1] Vibratory removal of 14-in timber piles is based on removal of 12-in timber piles.
[2] Vibratory removal of 12-in steel piles is based on vibratory installation of 12-in steel piles.

Level A Harassment Distances and Areas

Distances to Level A harassment were estimated using the NMFS User Spreadsheet. When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some

degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory pile driving and pile removal, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS.

A summary of the calculated Level A harassment distances and areas is presented in Table 6.

Level B Harassment Distances and Areas

Level B harassment distances from impact pile driving of 36-inch steel piles and from vibratory pile removal of 12-inch steel piles and 14-inch timber piles are calculated using a practical spreading model of the sonar equation

$$EL = SL - 15 \log_{10}(R)$$

where EL is the echo level (or received level), which is the sound threshold level at the Level B harassment (160 dB re 1 µPa for impact pile driving and 120 dB re 1 µPa for vibratory pile driving and pile removal); R is the Level B harassment distance in meters.

Level B harassment distance for vibratory pile driving and removal of the 24-inch steel piles, and the vibratory driving of 36-inch piles is based on in situ measurements of vibratory pile driving of 36-inch piles conducted during Year One of the Seattle Multimodal Project at Colman Dock (WSDOT 2018). The results show that underwater pile driving noise cannot be detected at a distance of 8.69 km (WSDOT 2018).

The Level B harassment areas were estimated by WSDOT using geographic information system (GIS) tools to eliminate land masses and other obstacles that block sound propagation.

A summary of the measured Level B harassment distances and areas is presented in Table 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT DISTANCES AND AREAS

Pile type, size & pile driving method	Level A harassment distance (m)/area (km²)					Level B harassment distance (m)/area (km²)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Impact drive (proof) 36 inch steel pile	377.5/0.37	13.4/0.00	449.6/0.52	202/0.11	14.7/0.00	736/1.70
Vibratory drive 36 inch steel pile	153.1/0.07	13.6/0.00	226.4/0.16	93.1/0.03	6.5/0.00	8,690/40.53
Vibratory drive/removal, 24 inch steel piles	96.6/0.03	8.6/0.00	142.8/0.06	58.7/0.01	4.1/0.00	8,690/40.53
Vibratory removal 14 inch timber pile	8.0/0.00	0.7/0.00	11.8/0.00	4.8/0.00	0.3/0.00	2,154/5.47
Vibratory removal 12 inch steel pile	6.5/0.00	0.6/0.00	9.6/0.00	3.9/0.00	0.3/0.00	2,154/5.47

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine mammal occurrence are based on the U.S. Navy Marine Species Density Database (U.S. Navy, 2019) and on WSDOT marine mammal monitoring efforts during prior years of construction work at Seattle Multimodal Project at Colman Dock. A summary of the marine mammal density is provided in Table 7.

TABLE 7—MARINE MAMMAL DENSITY IN THE SEATTLE MULTIMODAL PROJECT AT COLMAN DOCK CONSTRUCTION AREA

Marine mammals	Density (animals/km²)
Gray whale	0.0048
Humpback whale	0.00074
Minke whale	0.00045
Killer whale (West Coast transient)	0.005141
Bottlenose dolphin	NA
Harbor porpoise	0.54
Dall's porpoise	0.00045
Harbor seal	3.91
Northern elephant seal	0
California sea lion	0.2211
Steller sea lion	0.0478

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The fundamental approach for take calculation is to use the information aggregated in the Navy density database (U.S. Navy, 2019) with the following equation:

Total Take = marine mammal density × ensonified area × pile driving days

Some adjustments were made based on prior observation of marine mammals in the project area and account for group size. Specific adjustments for calculating take numbers are provided below.

- Humpback whale—During the prior year WSDOT Multimodal Project construction, three individuals have been observed. Given that humpback whales are occasionally present in the area, it is unlikely they would be present on a daily basis. Instead it is assumed that three individuals may be present in the Level B harassment zones once a month during the in-water work window (7 months), or 21 exposures.
- Minke whale—During the prior year WSDOT Multimodal Project work, one individual minke whale was observed. Observations have been of single individuals, not groups. It is assumed that one individual may be present in the Level B harassment zone once a month during the in-water work window (7 months), or 7 exposures.
- Gray whale—This species is uncommon in the project area. Therefore, Level B harassment take of gray whale is based on take of 1 animal per month over the 7 months work window. This results a total of 7 lakes.
- West Coast transient killer whale—Level B harassment exposures were calculated to be two. However, two groups of 10 individuals have been observed. It is assumed that one group size of 10 animals may be present in the Level B harassment zones once a month during the in-water work window (7 months), or 70 exposures.
- Bottlenose dolphin—The bottlenose dolphin estimate is based on sightings data from Cascadia Research Collective. Between September 2017 and March 2018, a group of up to seven individuals was sighted in South Puget Sound (EPS, 2018). It is assumed that this group is still present in the area. Given how rare bottlenose dolphins are in the area, it is unlikely they would be present on a daily basis. Instead it is assumed that one group size of seven animals may be present in the Level B harassment zone once a month during the in-water work window (7 months), or 49 exposures.
- Northern elephant seal—Estimated northern elephant seals Level B harassment exposures were calculated to be zero. However, one individual of this species was observed in the project area once. Therefore, the take number was adjusted to seven takes based on

one animal for the project duration of 7 months.

• California sea lion—Estimated California sea lion Level B harassment exposures were calculated to be 104. However, there were 763 observations during project monitoring, with a high of 29 individuals in one day. Conservatively assuming that 29 individuals may be present in the Level B harassment zones during 47 days of pile driving or removal, it is assumed that 1,363 exposures to pile driving noise may occur.

• Harbor porpoise—Estimated harbor porpoise Level A harassment exposures were calculated to be five. However, given the relatively larger Level A harassment distance for high-frequency cetaceans, we assume that three incidents of Level A harassment may occur per month for the 7 months work window to yield a total of 21 takes by Level A harassment.

• Dall's porpoise—This species is uncommon in the project area. Therefore, Level B harassment take of Dall's porpoise is based on take of 3 animals per group size each month over the 7 months work window. This results a total of 35 lakes.

• Harbor seal—Estimated harbor seal Level A harassment exposures were calculated to be three. However, WSDOT made a total of 243 harbor seal observations in the 60–184 m Level A zone, with a high of 2 individuals in 1 day. This portion of the Level A harassment zone would be beyond the prescribed shutdown zone, and this estimated zone would occur on 26 days. Assuming that two individuals may be present once a day for 26 days results in 52 potential Level A harassment takes.

• Steller sea lion—Level B harassment take of Steller sea lion is based on take of 3 animals per day over the 47 days window. This results a total of 141 lakes.

A summary of estimated marine mammal takes is listed in Table 8.

TABLE 8—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL A AND LEVEL B HARASSMENT

Marine mammals	Estimated Level A harassment	Estimated Level B harassment	Estimated total harassment	Abundance	Percentage (%)
Gray whale	0	7	7	26,906	0.02
Humpback whale	0	21	21	2,900	0.72
Minke whale	0	7	7	636	1.10
Killer whale (West Coast transient)	0	70	70	243	28.81
Bottlenose dolphin	0	49	49	1,924	2.55
Harbor porpoise	21	442	463	11,233	4.12
Dall's porpoise	0	35	35	25,750	0.16
Harbor seal	52	3,155	3,207	11,036	21.50
Northern elephant seal	0	7	7	179,000	0.02
California sea lion	0	1,363	1,363	257,606	0.72
Steller sea lion	0	141	141	43,201	0.33

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Time Restriction

The applicant stated that work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2020, and February 15, 2021.

Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater sound pressure levels (SPLs) or cumulative sound exposure levels (SEL_{cum}) could cause PTS.

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 160 dB_{rms} re 1 µPa for impulse noise sources (impact pile driving) and 120 dB_{rms} re 1 µPa for continuous noise sources (vibratory pile driving and pile removal).

WSDOT shall establish exclusion zones as shown in Table 9 to prevent Level A harassment takes of all cetaceans and otariids, and to minimize Level A harassment takes of phocids.

For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes

within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane.

WSDOT shall establish exclusion zones for SRKW and all marine mammals that takes are not authorized at the Level B harassment distances. Specifically, impact pile driving of 36-inch steel piles, a 750 m exclusion zone shall be established. For vibratory driving of 24- and 36-inch steel piles and vibratory pile removal of 24-inch steel piles, a 8.7 km exclusion zone shall be established. For vibratory pile removal of 14-inch timber piles and 12-inch steel piles, a 2.2 km exclusion zone shall be established.

A summary of exclusion zones is provided in Table 9.

TABLE 9—EXCLUSION ZONES (m) FOR VARIOUS MARINE MAMMALS

Pile type, size & pile driving method	Exclusion distance (m)					SRKW (m)
	LF	MF	HF	Phocid	Otariid	
Impact drive 36-inch steel pile	380	15	450	60	15	750
Vibratory drive 36-inch steel pile	160	15	230	60	10	8,700
Vibratory drive/removal, 24-inch steel piles	100	10	150	60	10	8,700
Vibratory remove, 14-inch timber pile or 12-inch steel pile	10	10	15	10	10	2,200

LF = low-frequency cetacean; MF = mid-frequency cetacean; HF = high-frequency cetacean; PW = phocid; OW = otariids; SRKW = Southern Resident killer whale.

NMFS-approved PSO shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones beginning 30 minutes before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is detected within or entering an exclusion zone listed in Table 9.

WSDOT shall also implement shutdown measures if SRKW are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal shall be suspended until the whale exits the Level B harassment zone, or 15 minutes have elapsed with no sighting of the animal, to avoid further Level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Local Marine Mammal Research Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

Based on our evaluation of the applicant's mitigation measures, as well as other measures considered by NMFS, all of which are described above, NMFS has determined that the precribed mitigation measures provide the means effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the

most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its Seattle Multimodal Project at Colman Dock. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer Curriculum Vitas.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of zones of influence (ZOIs) from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established.

- During vibratory driving of 36-inch pile or vibratory driving/removal of 24-inch piles, four land-based PSOs and one ferry-based PSO will monitor the zone.
- During vibratory removal of 12-inch or 14-inch piles, four land-based PSOs will monitor the zone.
- During impact driving of 36-inch piles, three land-based PSOs will monitor the zone.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

To verify the required monitoring distance, the exclusion zones and zones of influence will be determined by using a range finder or hand-held global positioning system device.

Reporting Measures

WSDOT is required to submit a draft report on all marine mammal monitoring conducted under the IHA (if issued) within 90 calendar days of the completion of the project. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain the informational elements described in the Marine Mammal Monitoring Plan, dated May 12, 2020, including, but not limited to:

1. Dates and times (begin and end) of all marine mammal monitoring.

2. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed.

3. Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state).

4. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.

5. Age and sex class, if possible, of all marine mammals observed.

6. PSO locations during marine mammal monitoring.

7. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).

8. Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level B harassment zones while the source was active.

9. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone.

10. Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.

11. Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

12. Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region (WCR) regional stranding coordinator (1–866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, WSDOT must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. WSDOT must not resume their activities until notified by NMFS.

The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 8, given that the anticipated effects of WSDOT's Seattle Multimodal Project at Colman Dock activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although some marine mammals could experience, and are authorized for Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kilohertz (kHz). Therefore, the degree of PTS is not likely to affect the echolocation performance of the harbor porpoise specie which uses frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Nonetheless, we evaluate the estimated take in this negligible impact analysis.

Most marine mammal takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral disturbance and temporary threshold shift (TTS)) only. Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. These behavioral distances are not expected to affect marine mammals' growth, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Puget Sound. A few marine mammals could experience TTS if they occur within the Level B TTS zone. However, as discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours.

Portions of the SRKW range is within the proposed action area. In addition, the entire Puget Sound is designated as the SRKW critical habitat under the ESA. However, WSDOT would be required to implement strict mitigation measures to suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of SRKW would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section. There is no other ESA designated critical habitat in the vicinity of the Seattle Multimodal Project at Colman Dock construction area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the relatively short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at the Seattle Multimodal Project at Colman Dock would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Injury—a few individuals of harbor seal and harbor porpoise could experience Level A harassment in the form of mild PTS;
- Behavioral disturbance—eleven species/stocks of marine mammals could experience behavioral disturbance and TTS from the WSDOT's Seattle Multimodal Project at Colman Dock construction. However, as discussed earlier, the area to be affected is small and the duration of the project is short. In addition, the nature of the take would involve mild behavioral modification; and
- Although portion of the SWKR critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile driving are expected to avoid take of SRKW, and impacts to prey species and the habitat itself are expected to be minimal. No other important habitat for marine mammals exist in the vicinity of the project area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the prescribed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of

the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The estimated take is below one third of the population for all marine mammals (Table 8).

Based on the analysis contained herein of the proposed activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Regional Office, whenever we propose to authorize take for endangered or threatened species.

The only species listed under the ESA with the potential to be present in the action area is the Mexico Distinct Population Segment (DPS) of humpback whales. The effects of this Federal action were adequately analyzed in NMFS' Biological Opinion for the Seattle Multimodal Project at Colman Dock, Seattle, Washington, dated October 1, 2018, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. NMFS West Coast Region has confirmed the Incidental Take Statement (ITS) issued in 2017 is applicable for the IHA. That ITS exempts the take of seven humpback whales from the Mexico DPS.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to the WSDOT to conduct Seattle Multimodal Project at Colman Dock Year 4 in Washington State, between September 10, 2020, and September 9, 2021, provided the previously prescribed mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 15, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Performance Review Board as of October 1, 2020.

DATES: *Effective Date:* October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspectors General at the telephone numbers listed below.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008, established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. The CIGIE is an interagency council whose executive chair is the Deputy Director for Management, Office of Management and Budget, and is comprised principally of the 73 Inspectors General (IGs).

II. CIGIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2019, are as follows:

Agency for International Development

Phone Number: (202) 712–1150

CIGIE Liaison—Thomas Ullom (202) 712–1150

Thomas Ullom—Deputy Inspector General.

Justin Brown—Counselor to the Inspector General (SL).

Suzann Gallaher—Assistant Inspector General for Investigations.

Marc Meyer—Deputy Assistant Inspector General for Investigations.

Thomas Yatsco—Assistant Inspector General for Audit.

Alvin A. Brown—Deputy Assistant Inspector General for Audit.
Toayoa Aldridge—Deputy Assistant Inspector General for Audit.
Sabrina Ferguson-Ward—Assistant Inspector General for Management.
Nicole Angarella—General Counsel to the Inspector General.

Department of Agriculture

Phone Number: (202) 720–8001

CIGIE Liaison—Angel N. Bethea (202) 720–8001

Ann M. Coffey—Deputy Inspector General.
Christy A. Slamowitz—Counsel to the Inspector General.
Gilroy Harden—Assistant Inspector General for Audit.
Steven H. Rickrode, Jr.—Deputy Assistant Inspector General for Audit.
Yarisis Rivera Rojas—Deputy Assistant Inspector General for Audit.
Peter P. Paradis, Sr.—Deputy Assistant Inspector General for Investigations.
Virginia E.B. Rone—Assistant Inspector General for Analytics and Integration.
Robert J. Huttenlocker—Assistant Inspector General for Management.

Department of Commerce

Phone Number: (202) 482–5476

CIGIE Liaison—Jacqueline G. Ruley (202) 482–5476

Roderick Anderson—Deputy Inspector General.
Richard Bachman—Assistant Inspector General for Audits.
E. Wade Green, Jr.—Counsel to the Inspector General.
Robert O. Johnston, Jr.—Chief of Staff.
Frederick J. Meny—Assistant Inspector General for Audit & Evaluation.
Mark H. Zabarsky—Principal Assistant Inspector General for Audit & Evaluation.

Council of the Inspectors General on Integrity and Efficiency

Phone Number: 202–292–2603

Alan F. Boehm—Executive Director.
Doug Holt—Executive Director, Training Institute.

Department of Defense

Phone Number: (703) 604–8324

CIGIE Liaison—Brett Mansfield (703) 604–8300

Daniel R. Blair—Deputy Chief of Staff.
Michael S. Child, Sr.—Deputy Inspector General for Overseas Contingency Operations.
Carol N. Gorman—Assistant Inspector General for Cyber Operations.
Paul Hadjiyane—General Counsel.
Carolyn R. Hantz—Assistant Inspector General for Program, Combatant Command, and Overseas Contingency Operations.
Leo J. FitzHarris—Assistant Inspector General for Strategic Planning and Performance.
Janice M. Flores—Assistant Inspector General for Investigations, Internal Operations.
Marguerite C. Garrison—Deputy Inspector General for Administrative Investigations.
Theresa S. Hull—Assistant Inspector General for Acquisition, Contracting and Sustainment.
Kelly P. Mayo—Assistant Inspector General for Investigations.
Troy M. Meyer—Principal Assistant Inspector General for Audit.
Dermot F. O'Reilly—Deputy Inspector General for Investigations.
Michael J. Roark—Deputy Inspector General for Evaluations.
Steven A. Stebbins—Chief of Staff.
Paul K. Sternal—Assistant Inspector General for Investigations, Investigative Operations.
Randolph R. Stone—Assistant Inspector General for Space, Intelligence, Engineering, and Oversight.
Richard B. Vasquez—Assistant Inspector General for Readiness and Global Operations.
Lorin T. Venable—Assistant Inspector General for Financial Management and Reporting.
David G. Yacobucci—Assistant Inspector General for Data Analytics.

Department of Education OIG

Phone Number: (202) 245–6900

CIGIE Liaison—Keith Maddox (202) 748–4339

Robert Mancuso—Assistant Inspector General for Information Technology Audits and Computer Crimes Investigations.
Kevin Young—Deputy Assistant Inspector General for Information Technology Audits and Computer Crimes Investigations.
Bryon Gordon—Assistant Inspector General for Audit.
Sean Dawson—Deputy Assistant Inspector General for Audit.
Aaron Jordan—Assistant Inspector General for Investigations.
Shafee Carnegie—Deputy Assistant Inspector General for Investigations.

Department of Energy

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CIGIE Liaison—Sabrina Ferguson-Ward (202) 586–5798

CIGIE Liaison—Catherine Ford (202) 586–4393

Jennifer Quinones—Deputy Inspector General.
Nicholas Acker—Counsel to the Inspector General.
Virginia Grebasch—Senior Counsel, FOIA and Privacy Act Officer.
Dustin Wright—Assistant Inspector General for Investigations.
Lewe Sessions—Deputy Inspector General for Investigations.
Sarah Nelson—Assistant Inspector General for Technology, Financial and Analytics.
Jack Rouch—Deputy Assistant Inspector General for Audits.
John McCoy II—Deputy Assistant Inspector General for Audits.

Environmental Protection Agency

CIGIE Liaison—Jennifer Kaplan (202) 566–0918

Charles Sheehan—Deputy Inspector General.
Edward Shields—Associate Deputy Inspector General.
Helina Wong—Assistant Inspector General for Investigations.

Federal Labor Relations Authority

Phone Number: (202) 218–7744

CIGIE Liaison—Dana Rooney (202) 218–7744

Dana Rooney—Inspector General.

Federal Maritime Commission

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CIGIE Liaison—Jon Hatfield (202) 523–5863

Jon Hatfield—Inspector General.

Federal Trade Commission

Phone Number: (202) 326–2355

CIGIE Liaison—Andrew Katsaros (202) 326–2355

Andrew Katsaros—Inspector General.

General Services Administration

Phone Number: (202) 501–0450

CIGIE Liaison—Phyllis Goode (202) 273–7270

Robert C. Erickson—Deputy Inspector General.
Larry L. Gregg—Associate Inspector General.
Edward Martin—Counsel to the Inspector General.
R. Nicholas Goco—Assistant Inspector General for Audits.

Barbara Bouldin—Deputy Assistant Inspector General for Acquisition Program Audits.
Brian Gibson—Deputy Assistant Inspector General for Real Property Audits.
James E. Adams—Assistant Inspector General for Investigations.
Jason Suffredini—Deputy Assistant Inspector General for Investigations.
Patricia D. Sheehan—Assistant Inspector General for Inspections.
Kristine Preece—Assistant Inspector General for Administration.

Department of Health and Human Services

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Chris Chilbert—Assistant Inspector General/Chief Information Officer.
Gregg Treml—Assistant Inspector General/Deputy Chief Financial Officer.
Gary Cantrell—Deputy Inspector General for Investigations.
Elton Malone—Assistant Inspector General for Investigations.
Shimon Richmond—Assistant Inspector General for Investigations.
Christian Schrank—Assistant Inspector General for Investigations.
Suzanne Murrin—Deputy Inspector General for Evaluation and Inspections.
Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
Ann Maxwell—Assistant Inspector General for Evaluation and Inspections.
Gregory Demske—Chief Counsel to the Inspector General.
Robert DeConti—Assistant Inspector General for Legal Affairs.
Lisa Re—Assistant Inspector General for Legal Affairs.
Amy Frontz—Deputy Inspector General for Audit Services.
Tamara Lilly—Assistant Inspector General for Audit Services.
Brian Ritchie—Assistant Inspector General for Audit Services.

Department of Homeland Security

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Donald Bumgardner—Deputy Assistant Inspector General for Audits (Law Enforcement & Terrorism).
James Izzard—Deputy Assistant Inspector General for Investigations.
James Beauchamp—Deputy Assistant Inspector General for Investigations.
Thomas Kait—Assistant Inspector General for Special Reviews and Evaluations.
Jackson Eaton—Deputy Assistant Inspector General for Special Reviews and Evaluations.
Erica Paulson—Assistant Inspector General for External Affairs.
Scott Wrightson—Chief Data Officer.

Department of Housing and Urban Development

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Charles Jones—Senior Advisor for Operations and External Affairs.
Kilah White—Assistant Inspector General for Audit.
Kimberly Randall—Deputy Assistant Inspector General for Audit (Field Operations).
John Buck—Deputy Assistant Inspector General for Audit (Field Operations).
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Christopher Webber—Deputy Assistant Inspector General for Information Technology.

Department of the Interior

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Matthew Elliott—Assistant Inspector General for Investigations.
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Department of Justice

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Jason R. Malmstrom—Assistant Inspector General for Audit.
Mark L. Hayes—Deputy Assistant Inspector General for Audit.
Sarah E. Lake—Assistant Inspector General for Investigations.
Sandra Barnes—Deputy Assistant Inspector General for Investigations.
Donald Kyzar—Assistant Inspector General for Information Technology.
Gregory T. Peters—Assistant Inspector General for Management and Planning.
Cynthia Sjoberg Radway—Deputy Assistant Inspector for Management and Planning.

Department of Labor

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Leia Burks—Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
Thomas D. Williams—Assistant Inspector General for Management and Policy.
Charles Sabatos—Deputy Assistant Inspector General for Management and Policy.
Luiz A. Santos—Assistant Inspector General for Congressional and Public Relations.
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National Aeronautics and Space Administration

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National Archives and Records Administration

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David P. Berry—Inspector General.

National Science Foundation

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Mark Bell—Assistant Inspector General for Audits.

Ken Chason—Counsel to the Inspector General.

Nuclear Regulatory Commission

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CIGIE Liaison—Ziad Buhaissi (301) 415–1983

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Brett M. Baker—Assistant Inspector General for Audits.

Office of Personnel Management

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Melissa D. Brown—Deputy Assistant Inspector General for Audits.

Lewis F. Parker, Jr.—Deputy Assistant Inspector General for Audits.

Drew M. Grimm—Assistant Inspector General for Investigations.

Thomas W. South—Deputy Assistant Inspector General for Investigations.

James L. Ropelewski—Assistant Inspector General for Management.

Nicholas E. Hoyle—Deputy Assistant Inspector General for Management.

Paul N. St. Hillaire—Assistant Inspector General for Legal and Legislative Affairs.

Peace Corps

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CIGIE Liaison—Joaquin Ferrao (202) 692–2921

Kathy Buller—Inspector General (Foreign Service).

Joaquin Ferrao—Deputy Inspector General and Legal Counsel (Foreign Service).

United States Postal Service

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CIGIE Liaison—Agapi Doulaveris (703) 248–2286

Elizabeth Martin—General Counsel.

Gladis Griffith—Deputy General Counsel.

Railroad Retirement Board

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CIGIE Liaison—Jill Roellig (312) 751–4993

Patricia A. Marshall—Counsel to the Inspector General.

Debra Stringfellow-Wheat—Assistant Inspector General for Audit.

Small Business Administration

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CIGIE Liaison—Mary Kazarian (202) 205–6586

Brian Grossman—Assistant Inspector General for Investigations.

Andrea Deadwyler—Assistant Inspector General for Audits.

Sheldon Shoemaker—Assistant Inspector General for Management and Operations.

Social Security Administration

Phone Number: (410) 966–8385

CIGIE Liaison—Walter E. Bayer, Jr. (202) 358–6319

Benjamin Alpert—Deputy Inspector General.

Chad Bungard—Chief of Staff.

Michelle L.H. Anderson—Assistant Inspector General for Audit.

Jennifer Walker—Assistant Inspector General for Investigations.

Kathleen Sedney—Deputy Assistant Inspector General for Audit.

Kevin Huse—Deputy Assistant Inspector General for Investigations.

Donald Jefferson—Deputy Assistant Inspector General for Investigations.

Special Inspector General for the Troubled Asset Relief Program

Phone Number: (202) 622–1419

CIGIE Liaison—Vince Micone (202) 927–1813

Vincent Micone III—Principal Deputy Special Inspector General.

Thomas Jankowski—Deputy Inspector General for Investigations.

Melissa Bruce—Deputy Inspector General for Management.

Department of State

Phone Number: (571) 348–0200

CIGIE Liaison—Sarah Breen (571) 348–3992

Diana R. Shaw—Deputy Inspector General.

Norman P. Brown—Assistant Inspector General for Audits.

Gayle L. Voshell—Deputy Assistant Inspector General for Audits.

Tinh T. Nguyen—Deputy Assistant Inspector General for Audits, Middle East Region Operations.

Sandra J. Lewis—Assistant Inspector General for Inspections.

Lisa R. Rodely—Deputy Assistant Inspector General for Inspections.

Michael T. Ryan—Assistant Inspector General for Investigations.

Kevin S. Donohue—Deputy General Counsel.

Kerry K. Neal—Assistant Inspector General for Management.

Jeffrey McDermott—Assistant Inspector General for Evaluations and Special Projects.

Nicole S. Mathis—Deputy Assistant Inspector General for Evaluations and Special Projects.

Parisa Salehi—Assistant Inspector General for Enterprise Risk Management.

Department of Transportation

Phone Number: (202) 366–1959

CIGIE Liaison—Nathan P. Richmond: (202) 493–0422

Mitchell L. Behm—Deputy Inspector General.

M. Elise Chawaga—Principal Assistant Inspector General for Investigations.

Barry DeWeese—Principal Assistant Inspector General for Auditing and Evaluation.

Matthew E. Hampton—Assistant Inspector General for Aviation Audits.

Louis C. King—Assistant Inspector General for Financial Audits.

Mary Kay Langan-Feirson—Assistant Inspector General for Acquisition and Procurement Audits.

David Pouliott—Assistant Inspector General for Surface Transportation Audits.

Charles A. Ward—Assistant Inspector General for Audit Operations and Special Reviews.

Department of the Treasury

Phone Number: (202) 622–1090

CIGIE Liaison—Rich Delmar (202) 927–3973

Richard K. Delmar—Deputy Inspector General.

Jeffrey Lawrence—Assistant Inspector General for Management.

Sally Luttrell—Assistant Inspector General for Investigations.

Deborah L. Harker—Assistant Inspector General for Audit.

Pauletta Battle—Deputy Assistant Inspector General for Financial Management and Transparency Audits.

Susan Barron—Deputy Assistant Inspector General for Financial Sector Audits.

Donna F. Joseph—Deputy Assistant Inspector General for Cyber and Financial Assistance Audits.

Treasury Inspector General for Tax Administration/Department of the Treasury

Phone Number: (202) 622–6500

CIGIE Liaison—David Barnes (Acting) (202) 622–3062

Lori Creswell—Deputy Chief Counsel.

Gladys Hernandez—Chief Counsel.

Heather Hill—Assistant Inspector General for Audit, Management Services and Exempt Organizations.

James Jackson—Deputy Inspector General for Investigations.

Nancy LaManna—Assistant Inspector General for Audit, Management, Planning, and Workforce Development.

Russell Martin—Assistant Inspector General for Audit, Returns Processing, and Accounting Services.

Michael McKenney—Deputy Inspector General for Audit.

Susan Moats—Assistant Inspector General for Investigations—Field.

Trevor Nelson—Assistant Inspector General for Investigations, Cyber, Operations and Investigative Support.

Richard Varn II—Chief Information Officer.

Danny Verneuille—Assistant Inspector General for Audit, Security, and Information Technology Services.

Matthew Weir—Assistant Inspector General for Audit, Compliance, and Enforcement Operations.

Department of Veterans Affairs

Phone Number: (202) 461–4603

CIGIE Liaison—Brandy Beckham (202) 264–9376

David Case—Deputy Inspector General.

John D. Daigh—Assistant Inspector General for Healthcare Inspections.

Julie Kroviak—Deputy Assistant Inspector General for Healthcare Inspections.

Melanie Krause—Assistant Inspector General for Management and Administration.

Gopala Seelamneni—Deputy Assistant Inspector General for Management and Administration/Chief Technology Officer.

Tara Porter—Deputy Assistant Inspector General for Management and Administration

Dated: September 11, 2020.

Shiji S. Thomas,

Chair, CIGIE Oversight.gov Subcommittee/ Forensic Accounting Manager, NSF OIG.

[FR Doc. 2020–20959 Filed 9–22–20; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement for Army Training Land Retention at Pōhakuloa Training Area in Hawai'i; Correction

AGENCY: Department of the Army; Defense (DOD).

ACTION: Notice of intent; correction.

SUMMARY: The Department of the Army (Army) published a document in the **Federal Register** of September 4, 2020, concerning its continuing intent to prepare an Environmental Impact Statement to address the Army's proposed retention of up to approximately 23,000 acres of land currently leased to the Army by the state of Hawai'i (''State-owned land'') at Pōhakuloa Training Area (PTA) on the island of Hawai'i. The document referenced two in-person comment stations previously associated with the Virtual Scoping Open House to be held Wednesday, September 23, 2020. Now, however, because of the national and local orders and proclamations in response to the coronavirus (COVID–19) pandemic in the United States, including: The County of Hawai'i Mayor's COVID–19 Emergency Rule No. 11 dated August 25, 2020, and the Office of the Governor, State of Hawaii Office Twelfth Proclamation Related to the COVID–19 Emergency dated August 20, 2020, the Army is canceling the in-person comment stations. Only the in-person comment stations will be cancelled; the EIS Scoping Virtual Open House will be held as planned.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Donnelly, PTA Public Affairs Officer, at *michael.o.donnelly.civ@mail.mil* or (808) 969–2411.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 4, 2020, in FR Doc. 2020–19620, on page 55263, in the third column, correct the **SUPPLEMENTARY INFORMATION** caption to read:

SUPPLEMENTARY INFORMATION:

PTA has been used for training as early as 1938, but was not used routinely until 1943. PTA was formally established in 1956 through a maneuver agreement granted by the Territory of Hawai'i. In 1964, the State granted a 65-year lease of approximately 23,000 acres of land to the Army for military purposes. The lease expires on August 16, 2029. The 23,000 acres of State-owned land contain utilities, critical infrastructure, maneuver land, and key training facilities, some of which are not available elsewhere in Hawai'i. The land also provides access to approximately 110,000 acres of adjacent U.S. Government-owned land at PTA. PTA encompasses approximately 132,000 acres of land used for training military personnel for combat. It is the only U.S. training area in the Pacific region where training units can complete all mission essential tasks, and the only U.S. training facility in the Pacific region that can accommodate larger than company-sized units for livefire and maneuver exercises. The U.S. Army Hawaii (USARHAW) and other U.S. military units that train at PTA include the 25th Infantry Division, U.S. Marine Corps, U.S. Navy, U.S. Air Force, Hawaii National Guard, and U.S. Army Reserve. The Army's retention of State-owned land within PTA is needed to enable USARHAW to continue to conduct military training to meet its current and future training requirements. Retention of State-owned land is needed to allow access between major parcels of U.S. Government-owned land at PTA, retain substantial Army infrastructure investments, allow for future facility and infrastructure modernization, preserve limited maneuver area, provide austere environment training, and maximize use of the impact area in support of USARHAW-coordinated training. To understand the environmental consequences of the decision to be made, the EIS will evaluate the potential direct, indirect, and cumulative impacts of a range of reasonable alternatives that meet the purpose of, and need for, the Proposed Action. Alternatives to be considered, including the no action alternative, are (1) Full Retention, (2) Modified Retention, and (3) Minimum Retention and Access. Other reasonable alternatives raised during the scoping process and capable of meeting the project purpose and need will be considered for evaluation in the EIS. Native Hawaiian organizations; Federal, state, and local agencies; and the public are invited to be involved in the scoping process for the preparation of this EIS by participating in a scoping meeting and/or submitting written comments.

The scoping process will help identify potential environmental impacts and key issues of concern to be analyzed in the EIS. Written comments must be sent within 40 days of publication of the Notice of Intent in the **Federal Register**. In response to the coronavirus (COVID–19) pandemic in the United States and the Center for Disease Control's recommendations for social distancing and avoiding large public gatherings, the Army will not hold public scoping meetings for this action. In lieu of the public scoping meetings, the Army will use other alternative means to enable public participation such as virtual meetings using online meeting/collaboration tools, teleconference, social media, or email, as appropriate. An EIS Scoping Virtual Open House will be held on Wednesday, September 23, 2020 from 4–9 p.m. During the EIS Scoping Virtual Open House, video presentations can be viewed online at *https://home.army.mil/hawaii/index.php/PTAEIS* and oral and written comments will be accepted. Oral comments will be accepted via phone by calling (808) 300–0220. Notification of the EIS Scoping Virtual Open House date and time will also be published and announced in local news media outlets and on the EIS website. For those who do not have ready access to a computer or the internet, the scoping materials posted to the EIS website will be made available upon request by mail. Inquiries and requests for scoping materials may be made to Michael Donnelly, PTA Public Affairs Officer at (808) 969–2411 or by email at *michael.o.donnelly.civ@mail.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–20966 Filed 9–22–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0075]

Proposed Collection; Comment Request

AGENCY: National Defense University, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 23, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW, Building 62, Washington, DC 20319, ATTN: LTC Ann Summers, or call (202) 685–3323.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Master's Degree Application Form for International Students; OMB Control Number 0704–XXXX.

Needs and Uses: This form is used to collect the information required to admit international students to an NDU master's degree program. The respondents are prospective international students who wish to be admitted to an NDU master's degree program. They respond to this information collection in partial fulfillment of NDU application and admissions requirements. The completed collection instrument is processed by the NDU registrars and a committee of NDU faculty who review the application in consideration of admission to a master's degree program. The successful effect of this information collection is to satisfy NDU master's degree application requirements for international students so that an admissions decision can be made.

Affected Public: Foreign Nationals.

Annual Burden Hours: 30 hours.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 15 minutes.

Frequency: Annually.

Dated: September 11, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–21022 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0076]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The OSD is modifying a system of records titled ''National Language Service Corps (NLSC) Records,'' DHRA 07. The NLSC system is a cost-effective solution to the tactical and strategic management of foreign language support needs within the U.S. military and civilian enterprise for operations, plans, and workforce requirements. It provides a surge capability from individuals who are generally unavailable to the Government by tapping into our nation's population of skilled citizens who speak hundreds of languages critical to our nation's needs.

Initially established as a pilot program maintaining a pool of linguists proficient in ten languages, NLSC has since expanded its capabilities to support over 414 languages and dialects and provide over 4,000 man-hours of support to federal agencies annually. To meet the increasing need for professionals with language skills, in 2018, the NLSC expanded the reach of linguist support from DoD organizations to all federal government agencies and is modifying the system to accommodate this growth.

DATES: This system of records modification is effective upon publication; however comments on the routine uses will be accepted on or before October 23, 2020. The routine uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION: The NLSC is a federal program sponsored by the DoD through the Defense Language and National Security Education Office (DLNSEO). Designed to support federal agencies in times of national need, the NLSC provides and maintains a readily available civilian corps of 8,906 bi-lingual volunteers. The NLSC provides members with the opportunity to join an active community of culturally diverse individuals, utilize language development tools, and use their language skills on missions and mission deployments.

This modification will expand the categories of records in the system to include Social Security Numbers and other fields required to facilitate safe foreign travel. In addition, modifications were made to all other sections of the SORN, with the exception of, ''exemptions claimed,'' to align with the latest SORN templates and guidance. The intended purpose of this modification is to accommodate NLSC growth, modify an outdated tool to support NLSC missions more effectively, and meet the requirements of Office of Management and Budget (OMB) Circular A–108.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

In accordance with 5 U.S.C. 552a(r) and OMB Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

National Language Service Corps (NLSC) Records, DHRA 07.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Amazon Web Services (AWS), GovCloud West, 12900 Worldgate Drive, Suite 800, Herndon, VA 20170–6040.

SYSTEM MANAGER(S):

Associate Director, National Language Service Corps, 4800 Mark Center Drive, Suite 08G08, Alexandria, VA 22350–4000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 50 U.S.C. 1913, National Language Service Corps; DoD Directive 5124.02, Under Secretary of Defense for Personnel and Readiness (USD(P&R)); and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

To allow U.S. citizens with language skills to self-identify their skills for the purpose of temporary employment on an intermittent work schedule or service opportunities in support of the DoD or another department or agency of the United States. The information will be used to determine applicants' eligibility for NLSC membership, to identify and contact NLSC members, and to facilitate travel to foreign work assignments.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants to or members of the NLSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, other names used, social security number, DoD ID numbers, citizenship, gender/gender identification, race/ethnicity, home address, email address, home and mobile telephone numbers, official duty address, place of birth, birth date, age verification of 18 years, education information, disability information, financial information, security clearance, military discharge records, employment information (*e.g.,* federal employee, political appointee, armed forces), foreign language(s) spoken, foreign language proficiency levels, origin of foreign language(s) spoken, English proficiency levels, NLSC-assigned control number, passport information, marital status, emergency contact(s), beneficiary information, photo, blood type, height, hair color, eye color, identifying scars, marks, or tattoos, vaccination information, known medical conditions and prescriptions, anticipated separation date, and actual separation date from service.

RECORD SOURCE CATEGORIES:

The individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted in accordance with 5 U.S.C. 552a(b), the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors responsible for performing or working on contracts for the DoD when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure that apply to DoD officers and employees.

b. To another department or agency of the United States in need of temporary short-term foreign language services, where government employees are required or desired.

c. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

d. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

e. In an appropriate proceeding before a court, grand jury, or administrative or

adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic storage media, in accordance with the safeguards mentioned below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by NLSC-assigned control number, the individual's name or home address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

NLSC Charter Member Files. Destroy/Delete 4 years after termination of membership. Application of Non-enrollees. Destroy/Delete when 4 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are encrypted and kept on a secured network behind firewalls where files are regularly backed-up and maintained with regular intervals. Access to electronic records is limited to authorized personnel who have a DoD Common Access Card (CAC) and successfully completed the proper security training. Access to records is further restricted using multi-factor authentication, and PII is encrypted both at rest and when transmitted electronically.

The servers are housed in nondescript facilities which restrict access to individuals with a justified business reason. The facilities are guarded by entry gates, security guards, and supervisors who monitor officers and visitors via security cameras. When approved individuals are on site, they are given a badge that requires multi-factor authentication and limits access to pre-approved areas.

All NLSC personnel are certified for their roles in accordance with DoD Directive 8570.01–M. A cyber awareness-training program is implemented to ensure that upon arrival, and at least annually thereafter, all NLSC personnel receive DoD Cyber Awareness training. Additionally, cyber security personnel receive training to perform their assigned cyber security responsibilities, to include familiarization with their prescribed roles in all cyber related plans such as incident response, mitigation of malicious code and suspicious communications, configuration management, and disaster recovery.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this System of Records should address written inquiries to the Office of the Secretary of Defense (OSD)/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should contain the individual's full name, current home address, and the name and number of this system of records notice (SORN). In addition, the requester must provide either a notarized statement or a declaration made in accordance with 28 U.S.C. 1746, using the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to: Associate Director, National Language Service Corps, 4800 Mark Center Drive, Suite 08G08, Alexandria, VA 22350–4000. Signed, written requests should contain the individual's full name, current home address, and the name and number of this SORN. In addition, the requester must provide either a notarized statement or a declaration made in accordance with 28 U.S.C. 1746, using the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 13353, March 13, 2015.

[FR Doc. 2020–21008 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Thursday, November 5, 2020 from 11:00 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held by videoconference/teleconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility.'')

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, U.S. Navy, 703–275–6060 (Voice), 703–275–6064 (Facsimile), *gregory.h.gorman.mil@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the November 5, 2020 meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive an information briefing on current issues related to military medicine.

Agenda: The DHB anticipates receiving decision briefings on the Active Duty Women's Health Care Services and on the Modernization of the TRICARE Benefit as well as two briefings on direct-to-consumer genetic testing, with one of those being an introduction to the new DHB tasking. Any changes to the agenda can be found at the link provided in this notice.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 11:00 a.m. to 5:30 p.m. on November 5, 2020. The meeting will be held by videoconference/teleconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Ms. Michele Porter at (703) 275–6012 no later than Thursday, October 29, 2020. Once registered, the web address and audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Michele Porter at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB Designated Federal Officer (DFO), Captain Gorman, at *gregory.h.gorman.mil@mail.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: September 18, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–21024 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0082]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The OSD is modifying the system of records titled, ''Inquiry and Case Management System (ICMS),'' DHRA 16. The ICMS supports the Defense Personnel and Family Support Center's (DPFSC) employer support to the National Guard and Reserve (ESGR) Ombudsman Program. This system provides assistance to U.S. Military Service Members and members of the National Disaster Medical System with resolving employment and or re-employment conflicts and provides employers with Uniform Services Employment and Reemployment Act information.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 23, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION: The ESGR, a component of the Defense Personnel and Family Support Center, was established in 1972 to promote cooperation and understanding between Reserve Component Service members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. ESGR is supported by a network of more than 4,900 volunteers in 54 committees located across all 50 states, the District of Columbia, Guam-

Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Volunteers, hailing from small business and industry, government, education, and prior military service bring a vast wealth of experience to assist in serving employers, service members, and their families. Together with Headquarters, ESGR staff and a small cadre of support staff for each State Committee, volunteers work to promote and enhance employer support for military service in the Guard and Reserve.

The following sections of this system of records are being updated in order to reflect organizational and administrative changes: System Name and Number; Security Classification; System Location, System Manager(s); Authority for Maintenance of the System; Purpose(s) of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Policies and Practices for Storage of Records; Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Contesting Record Procedures; Administrative, Technical, and Physical Safeguards; Record Access Procedures, and Notification Procedures.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Employer Support of the Guard and Reserve Ombudsman Inquiry and Case Management System (ICMS), DHRA 16.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Computing Directorate Mechanicsburg, 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

SYSTEM MANAGER(S):

Executive Director, Employer Support of the Guard and Reserve, Suite 05E22, 4800 Mark Center Drive, Alexandria, VA 22350–1200; email: *osd.USERRA@mail.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. Ch. 43, Employment and Reemployment Rights of Members of the Uniformed Services; 5 U.S.C. 574, Confidentiality; 5 U.S.C. Part I, Chapter 5, Subchapter IV, Alternative Means of Dispute Resolution in the Administrative Process; 42 U.S.C. 300hh–11, National Disaster Medical System, ((d)(3) Employment and reemployment rights); 20 CFR 1002, Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994; 5 CFR 353, Restoration to Duty from Uniformed Service or Compensable Injury; DoD Instruction 1205.22, Employer Support of the Guard and Reserve; and DoD Instruction 1205.12, Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services.

PURPOSE(S) OF THE SYSTEM:

To record information related to the mediation of disputes and inquiry responses related to the Uniformed Services Employment and Reemployment Rights Act (USERRA); to track case assignments and mediation results of potential conflicts between employers and the National Guard, Reserves, or National Disaster Medical Service (NDMS) members in their employ; and to report statistics related to the Ombudsman Program in aggregate and at the state committee level. These records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the National Guard, Reserves, and NDMS submitting inquiries or requesting mediation; Employers (personnel) of the Guard and Reserve (ESGR) personnel; civilian employers; contractors and volunteers handling inquiries and cases; and individuals submitting inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's full name, home address, home or work phone number, home or work email address; current Uniformed Service member pay grade; ESGR case number; type of USERRA issue; employer name, employer type, employer's contact name, contact phone, email and address; name, email and state committee/ESGR affiliation of ESGR employee, contractor, or volunteer who handles an inquiry or mediation case; and case notes.

RECORD SOURCE CATEGORIES:

Individual Members of the National Guard, Reserves, and National Disaster Medical System (NDMS) who submit inquiries or request mediation, and the Member Management System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the DoD when necessary to accomplish an agency function related to this system of records.

b. To Department of Labor for Congressionally-mandated USERRA reporting (38 U.S.C. Employment and Reemployment Rights of Members of the Uniformed Services § 4432, Reports) with consideration of 5 U.S.C. 574, Confidentiality requirements.

c. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

d. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

e. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individual's full name and/or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy 7 years after case is closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Physical controls include combination locks, cipher locks, key cards, security guards, identification badges, closed circuit televisions, and controlled screenings. Technical controls include encryption of data at rest, encryption of data in transit, user identification and password, intrusion detection system, Common Access Card, firewall, virtual private network, role-based access controls, least privilege access, DoD public key infrastructure certificates, and two-factor authentication. Administrative controls include periodic security audits, regular monitoring of users' security practices, methods to ensure only authorized personnel access information, encryption of backups containing sensitive data, backups secured off-site, and use of visitor registers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should include the individual's full name and personal contact information (address, phone number, and email), and the name and number of this system of records notice (SORN). In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Executive Director, Headquarters, Employer Support of the Guard and Reserve, 4800 Mark Center Drive, Alexandria, VA 22350–1200. Signed, written requests should contain the individual's full name and personal contact information (address, phone number, and email). In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

April 14, 2006, 71 FR 19486; November 14, 2007, 72 FR 64058; October 23, 2015, 80 FR 64401.

[FR Doc. 2020–21013 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0080]

Privacy Act of 1974; System of Records

AGENCY: Defense Human Resources Activity (DHRA), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying the system of records titled, ''Commercial Travel Information Management System,'' DHRA 14 DoD. The Commercial Travel Information Management System (CTIMS) houses the CTIMS data repository and provides web-based travel information to the DoD travel community, including commercial vendors. It offers tools to submit help desk tickets, create reports, complete schedule training, plan trips, and complete other travel related functions, as well as provides a survey tool that supports the assessment of Defense Travel programs and the Defense Travel Management Office (DTMO) Workforce Assessment.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 23, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should

be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION: The CTIMS serves as a repository of DoD travel records consisting of travel booked within the Defense Travel System (DTS) in order to perform key DTMO mission functions including responding to federal reporting requirements and conducting oversight operations. The OSD proposes to modify this system of records to reflect the revision of the Joint Federal Travel Regulation and its codification in 41 CFR 300–304. Additional changes were made to reflect evolving mission needs and updates to the system location and security. In all, this modification reflects changes to the system location, system manager(s), security classification, authority for maintenance of the system, purpose of the system, categories of individuals covered by the system, categories of records in the system, record source categories, routine uses of records maintained in the system, including categories of users and purposes of such users, policies and practices for retrieval of records, policies and practices for retention and disposal of records, contesting record procedures, administrative, physical, and technical safeguards, record access procedures, and notification procedures. If these updates were not made, the system would not be able to provide the full set of services required to support the mission-essential Defense Travel Program.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Commercial Travel Information Management System, DHRA 14 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Network Enterprise Center, 1422 Sultan Road, Fort Detrick, MD 21702–9200.

SYSTEM MANAGER(S):

Deputy Director, Defense Travel Management Office, 4800 Mark Center Drive, Alexandria, VA 22350–9000, email: *dodhra.mc-alex.dtmo.mbx.mib-ccb@mail.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Ch. 57, Travel, Transportation, and Subsistence; 10 U.S.C. 135, Under Secretary of Defense (Comptroller); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 37 U.S.C. 463, Programs of Compliance, Electronic Processing of Travel Claims; 41 CFR. 300–304, Federal Travel Regulation System; DoD Directive (DoDD) 4500.09, Transportation and Traffic Management; DoDD 5100.87, Department of Defense Human Resources Activity (DoDHRA); DoD Instruction (DoDI) 5154.31, Vols 1–6 Commercial Travel Management; DoDI 1100.13, DoD Survey; DoD Financial Management Regulation 7000.14–R, Vol. 9, Travel Policy; DoD 4500.9–R, Defense Transportation Regulation (DTR), Parts I–V; The Joint Federal Travel Regulation, Uniformed Service Members and DoD Civilian Employees; and E.O. 9397 (SSN), as amended

PURPOSE(S) OF THE SYSTEM:

To establish a repository of DoD travel records consisting of travel booked within the Defense Travel System (DTS) as well as through commercial travel vendors in order to satisfy reporting requirements; identify and notify travelers in potential distress due to natural or man-made disasters; assist in the planning, budgeting, and allocation of resources for future DoD travel; conduct oversight operations; analyze travel, budgetary, or other trends; detect fraud and abuse; conduct surveys for the evaluation of program effectiveness, calculate travel and housing allowances, provide insight into the gap between product/service delivery and customer expectations, assist in understanding what drives customer satisfaction; respond to authorized internal and external requests for data relating to DoD official travel and travel related services, including premium class travel, and to provide website registered guests an online customer support site for submitting inquiries regarding commercial travel within the DoD, including assistance with the DTS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian personnel; active, former, and retired military members; Reserve and National Guard personnel; military academy nominees, applicants, and cadets; dependents of DoD sponsors accompanying the DoD sponsor on travel; and all other individuals in receipt of DoD travel orders; registered website guests submitting inquiries regarding DoD commercial travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

For DoD travelers, information from commercial travel booking systems and the DTS: Name, Social Security Number (SSN), DoD ID number, individual taxpayer identification number (ITIN), passport information, gender, date of birth, email address; home and/or business address, and cellular phone numbers; emergency contact information to include spouses name and number;

Employment information: Employment status, organizational information, duty station, rank, military status information, travel preferences, frequent flyer information;

Financial information to include government and/or personal charge card account numbers and expiration information, government travel charge card transactions, personal checking and/or savings account numbers, government accounting code/budget information, specific trip information to include travel itineraries (includes dates of travel) and reservations, trip record number, trip cost estimates, travel vouchers, travel-related receipts, travel document status information, travel budget information, commitment of travel funds, records of actual payment of travel funds and supporting documentation.

For dependents who are accompanying the DoD sponsor on travel: Name, date of birth, and passport information.

For registered website guests: Name, phone number, email address; if affiliated with DoD, duty station, rank, DoD ID number; if desiring travel alerts, cellular phone number and cellular phone provider; if requiring assistance with the DTS, last four of the SSN.

RECORD SOURCE CATEGORIES:

The individual, DTS, General Services Administration data repository, and commercial travel booking systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

b. To Federal and private entities providing travel services for purposes of arranging transportation at Government expense for official business.

c. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

d. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

e. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, home/business address, email address, passport number, date of birth, SSN, and/or DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Destroy 6 years after final payment or cancellation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are stored on secure military installations. Physical controls include use of visitor registers and identification badges, electronic key card access, safes, security guards, and closed-circuit television monitoring. Technical controls including intrusion detection systems, secure socket layer encryption, firewalls, intrusion detection systems, external certificate authority certificates, least privilege access, and virtual private networks protect the data in transit and at rest. Physical and electronic access is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Usernames and passwords, Common Access Cards, and DoD Public Key Infrastructure, in addition to role-based access controls are used to control access to the system data. Procedures are in place to deter and detect browsing and unauthorized access including periodic security audits and monitoring of users' security practices. Backups are stored on encrypted media and secured off-site. Periodic security audits and regular monitoring of user's security practices also occur. Electronic records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by the use of Common Access Cards (CAC) and data encryption.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should contain the individual's full name, personal contact information (home address, phone number, email), and the number and name of this system of records notice. In addition, the requester must provide either a notarized statement or a declaration made in accordance with 28 U.S.C. 1746, using the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents and appealing initial agency determinations are published in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Travel Management

Office, 4800 Mark Center Drive, Alexandria, VA 22350–9000. Signed, written requests should contain full name, email address, telephone number, and SSN (or passport number). Website registered guests should provide their full name and email address. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 22, 2014, 79 FR 49764.

[FR Doc. 2020–21014 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0081]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The OSD is modifying a system of records titled, ''Computer/Electronic Accommodations Program (CAP),'' DHRA 15. The CAP is a centrally funded program providing assistive (computer/electronic) technology solutions to individuals with hearing, vision, dexterity, cognitive, and/or communications impairments in the form of an accessible work environment. The records maintained in the system of records provide the necessary means to conduct mission essential activities, process requests for accommodations, track activity among different agencies, and deliver outreach activities related to assistive technology and industry best practices for providing reasonable accommodations. The Portal provides management and reporting capabilities, as well as facilitates CAP business processes such as customer communications and workflow tracking.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 23, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION: The CAP ensures reasonable accommodation information is fully accessible to authorized CAP personnel for processing reasonable accommodation requests for individuals with verified qualifying disabilities. The CAP works hand-in-hand with Disability Program Managers, Reasonable Accommodations Coordinators, supervisors, employees, service members, and any other applicable agency personnel in providing accommodations to allow individuals with disabilities to perform essential job functions.

The following sections of this system of records are being updated in order to reflect organizational and administrative changes: Security Classification; System Manager(s); Authority for Maintenance of the System; Purpose(s) of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Contesting Record Procedures; Administrative, Technical, and Physical Safeguards; Record Access Procedures, and Notification Procedures.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Computer/Electronic Accommodations Program, DHRA 15.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Computer/Electronic Accommodations Program (CAP), Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771.

SYSTEM MANAGER(S):

Deputy Director, Computer/Electronic Accommodations Program, 4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350–3100, *cap@mail.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1582, Assistive Technology, Assistive Technology Devices, and Assistive Technology Services; 29 U.S.C. 794d, Electronic and Information Technology; 42 U.S.C. Ch.126, Equal Opportunity For Individuals With Disabilities; and Department of Defense (DoD) Instruction 6025.22, Assistive Technology (AT) for Wounded, Ill, and Injured Service Members.

PURPOSE(S) OF THE SYSTEM:

To administer a centrally funded program to provide assistive (computer/electronic) technology solutions to individuals with hearing, vision, dexterity, cognitive, and/or communications impairments in the form of an accessible work environment. The system documents and tracks

provided computer/electronic accommodations and performs operational duties to accomplish mission objectives. It is also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal civilian employees in the DoD and CAP partnering agencies, and employees of other federal entities with disabilities, and wounded, ill and injured Service Members on Active Duty that can be accommodated with assistive technology solutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name(s), position/title, mailing/home/work address, work email address, disability information, official duty telephone number, worker compensation claims number, CAP request number, employment information, agency/organization, verification of disability, prior assistive technology solutions provided to the individual, CAP order number, and history of accommodations being sought. Product and vendor contact information including vendor name and address, vendor alias, phone number, fax number, email address, web address, order submission preference, orders, invoices, declination, and cancellation data for the product and identification of vendors, vendor products used, and product costs.

RECORD SOURCE CATEGORIES:

Individual, the DoD Workforce Recruitment Program database, partnering agencies/organizations, and vendors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

b. To Federal agencies/entities participating in the CAP for purposes of providing information as necessary to permit the agency to carry out its responsibilities under the program.

c. To commercial vendors for purposes of providing information to permit the vendor to identify and provide assistive technology solutions for individuals with disabilities.

d. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

e. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

f. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

g. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

h. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

i. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, agency/organization, CAP request number, work address, and work telephone number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

General files. Destroy three years after end of fiscal year in which a record is superseded or when no longer needed for reference, whichever is later.

Individual employee files that are created, received, and maintained by EEO reasonable accommodation or diversity/disability program or employee relations coordinators, immediate supervisors, CAP administrator, or HR specialists containing records of requests for reasonable accommodation and/or assistive technology devices and services through the agency or CAP that have been requested for or by an employee: Destroy three years after end of fiscal year of employee separation from the agency or conclusion of all appeals, whichever is later.

Records created, received, and maintained by EEO reasonable accommodation or diversity/disability program or employee relation coordinators, while advising on, implementing or appealing requests for or from an individual employee for reasonable accommodation: Destroy three years after end of fiscal year in which accommodation is decided or all appeals are concluded, whichever is later.

Records and data created, received, and maintained for purposes of tracking agency compliance with Executive Order 13164 and Equal Employment Opportunity Commission (EEOC) guidance: Delete/destroy three years after end of fiscal year in which compliance report is filed or when no longer needed for reference.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Multifactor log-in authentication including CAC authentication and password. Access controls enforce need-to-know policies so only authorized users have access to PII. Additionally, security audit and accountability policies and procedures directly support privacy and accountability procedures. Network encryption protects data transmitted over the network while disk

encryption secures the disks storing data. Key management services safeguards encryption keys. Sensitive data is identified and masked as practicable. All individuals granted access to this system of records must complete requisite training to include Information Assurance and Privacy Act training. Sensitive data will be identified, properly marked with access by only those with a need to know, and safeguarded as appropriate.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should contain individual's full name, agency/organization, CAP request number, work address, work telephone number, and the name and number of this system of records notice (SORN). In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and for appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Program Manager, Computer/Electronic Accommodations Program, 4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350–1200. Signed, written requests should include the individual's full name and the name and number of this SORN. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 11, 2011, 76 FR 49753; October 20, 2014, 79 FR 62602.

[FR Doc. 2020–21016 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0083]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying the system of records notice (SORN), ''Military OneSource (MOS) Case Management System (CMS),'' DPR 45 DoD. The Military OneSource is a call center and website providing comprehensive information on available benefits and services to Active Duty Military, Reserve and National Guard, eligible separated members and their families. These benefits and services include financial counseling, educational assistance and benefits, relocation planning and preparation, quality of life programs, and family and community programs. In addition to the formatting administrative changes, this modification expands the categories of individuals and records covered by the system of records.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 23, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil*; (703) 571–0070.

SUPPLEMENTARY INFORMATION: The MOS provides service members and their families with access to a wide variety of resources and confidential support in order to weather the demands of military life. In an increasingly technological and mobile world, the MOS offers support 24 hours a day, telephonically as well as online.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov*.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Military OneSource (MOS) Case Management System (CMS), DPR 45 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

DISA DECC Oklahoma City, 8705 Industrial Blvd., Building 3900, Tinker AFB, OK 73145–3336.

SYSTEM MANAGER(S):

Director, Military Community Support Programs, Military Community and Family Policy, 4800 Mark Center Drive, Suite 14E08, Alexandria, VA 22350–2300, email: *osd.pentagon.ousd-p-r.mbx.mcfp-nmc@mail.mil*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1781 note, Establishment of Online Resources To Provide Information About Benefits and Services Available to Members of the Armed Forces and Their Families; Directive-type Memorandum (DTM)–17–004, DoD Civilian Expeditionary Workforce; DoD Directive 1322.18, Military Training; DoD Instruction (DoDI) 1342.22, Military Family Readiness; DoDI 6490.06, Counseling Services for DoD Military, Guard and Reserve, Certain Affiliated Personnel, and Their Family Members; and DoDI 1322.26, Distributed Learning (DL).

PURPOSE(S) OF THE SYSTEM:

The MOS CMS allows the documentation of an individual's eligibility; identification of the caller's inquiry or issue to provide a warm hand-off, referral and/or requested information; the development towards a final solution and referral information. The system also processes training registration, enrollment requests, and self-motivated education/training for its Learning Management System (LMS). Records may be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness and conducting research. Information on individuals posing a threat to themselves or others will be reported to the appropriate authorities in accordance with DoD/Military Branch of Service and Component regulations and established protocols.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Service members; Reserve and National Guard members; members of the Coast Guard activated as part of the Department of the Navy under Title 10 authority; medically discharged Service members participating in one of the Services Wounded Warrior or Seriously Ill and Injured Programs; those with honorable, other than honorable and general (under honorable conditions) discharges (includes retirees and those on the Temporary Disability Retirement List); Reserved Officer Training Course and Service Academy Cadets; DoD Civilians Expeditionary Workforce Personnel; immediate family members of the groups described above; individuals with a legal responsibility to care for service member's children acting for the benefit of the children; survivors of deceased Service members contacting Military OneSource seeking information, referrals, or non-medical counseling; service providers accessing the LMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's full name, date of birth, gender, marital status, relationship to service member, rank, unit, branch of military service, military status, current address and mailing address, telephone numbers (work/home/cell/DSN) and participant authorization or refusal to allow incoming/outgoing text messages between participant and Military OneSource, email address, participant ID and case number (automatically generated internal numbers not provided to the participant), presenting issue/information requested, handoff type to contractor, handoff notes, if interpretation is requested and the language, referrals, and feedback from quality assurance follow-up with participants.

Online Learning Platform: User account name, course history (attempted dates/times, grades), member type, agency, installation, unit, and service provider affiliation.

Non-medical counseling information: Psychosocial history, assessment of personal concerns, provider name, phone number, and location, authorization number, and outcome summary.

RECORD SOURCE CATEGORIES:

The individual, Military OneSource program officials, Transition Assistance Program (TAP) Data Retrieval Web Service (TDRWS) and authorized contractors providing advice and support to the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, research studies concerning effectiveness of non-medical counseling interventions or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by the participant's or service members name, date of birth, participant ID, case ID, DoD ID number, phone number, email address, or a LMS account username.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Master database files: Cut off after 3 years of continuous inactivity or notification of discharge, retirement or separation of the service member. Destroy 10 years after cut off.

Non-medical counseling records: Cut off after 3 years of continuous inactivity or notification of discharge, retirement or separation of the service member. Destroy 15 years after cut off.

Training records: Cut off annually upon completion of training. Destroy 5 years after cut off.

Call center recordings: Cut off after referral to non-medical counseling, employee assistance program support, information and referral. Destroy 90 days after cut off.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Military OneSource CMS is hosted on a certified and accredited infrastructure. Records are maintained in a secure building in a controlled area accessible only to authorized personnel. Physical entry is restricted by the use of locks, passwords, and administrative procedures, which are changed periodically. The system is designed with access controls, comprehensive intrusion detection, and virus protection. Access to personally identifiable information in this system is role-based and restricted to those requiring the data in the performance of their official duties and completing annual information assurance and privacy training. Records are encrypted during transmission to protect session information, and while not in use (data at rest).

RECORDS ACCESS PROCEDURES:

Individuals seeking access to information about themselves or their minor legal dependent(s) in this record system should address inquiries in writing to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should include the individual's full name (First, Middle, Last), all other names used, current address, telephone number, email address, date of birth (YYYYMMDD), and the name and number of this system of records notice (SORN). In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If for legal minor dependent:

''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I have the legal responsibility to care for the minor child/children of a service member.''

Print Full Name of Child (First, Middle, Last) and Date of Birth (YYYYMMDD), (if multiple children, please submit separate request(s) for each:

''Executed on (date). (Signature of Requester (Parent/Legal Guardian 1)).''

''Executed on (date). (Signature of Requester (Parent/Legal Guardian 2)).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries in writing to the appropriate system manager. Signed, written requests should include the individual's full name (First, Middle, Last), all other names ever used, current address, telephone number, email address, date of birth (YYYYMMDD), and the name and number of this SORN. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If for legal minor dependent(s):

''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I have the legal responsibility to care for the minor child/children of a service member.''

Print Full Name of Child (First, Middle, Last) and Date of Birth (YYYYMMDD), (if multiple children, please submit separate request(s)) for each:

''Executed on (date). (Signature of Requester (Parent/Legal Guardian 1)).''

''Executed on (date). (Signature of Requester (Parent/Legal Guardian 2)).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

January 24, 2017, 82 FR 8182, February 11, 2015, 80 FR 7579, October 15, 2014, 79 FR 61854.

[FR Doc. 2020–21017 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0079]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The OSD is modifying a system of records entitled, ''Defense Sexual Assault Advocate Certification Program (D–SAACP),'' DHRA 10 DoD. The system records track Sexual Assault Response Coordinators (SARC) and Sexual Assault Prevention and Response Victim Advocates (SAPR VAs) certifications. System information is used to review, process, and report on the status of SARC and SAPR VA certifications to Congress.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before October 23, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION: The purpose of these modifications is for formatting changes and to comply with updates to the DoD Instruction 6495.03. The OSD is modifying a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. D–SAACP applicants must complete and submit the DD Form 2950, ''Department of Defense Sexual Assault Advocate Certification Program Application Packet,'' and a certificate of completion of 40 hours of D–SAACP-approved training, or the DD Form 2950–1, ''D–SAACP Renewal Application Packet,'' for all renewals. D–SAACP requires applicants to provide proof of 32 hours of continuing education training for certification renewal every two years.

SARCs and SAPR VAs must be appointed by commanders or other appropriate appointing authorities and D–SAACP certified. Also, SARCs and SAPR VAs must undergo or have undergone the required Assignment Eligibility Screening with favorable results (pre-screening requirements, or Tier 3 background investigation with State Criminal History Repository check, when necessary to augment Tier 3, or enrollment in Continuous Evaluation).

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 16, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Defense Sexual Assault Advocate Certification Program (D–SAACP), DHRA 10 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Organization for Victim Assistance, 510 King Street, Suite 424, Alexandria, VA 22314–3132.

SYSTEM MANAGER(S):

Program Manager, Senior Victim Assistance Advisor, Sexual Assault Prevention and Response Office (SAPRO), 4800 Mark Center Drive, Alexandria, VA 22350–1500, email: *whs.mc-alex.wso.mbx.SAPRO@mail.mil* or telephone: (571) 372–2657.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and DoD Instruction 6495.03, Defense Sexual Assault Advocate Certification Program (D–SAACP).

PURPOSE(S) OF THE SYSTEM:

To track Sexual Assault Response Coordinator (SARC) and Sexual Assault Prevention and Response Victim Advocate (SAPR VAs) certifications. System information will be used to review, process, and report on the status of SARC and SAPR VA certifications to Congress.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees and military personnel requesting national certification as an SARC or SAPR VA through the. D–SAACP and certified SARCs and SAPR VAs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's first name, middle initial, and last name; position type (DoD personnel); Service/DoD affiliation and status; grade/rank; installation/command; work email address and telephone number; official military address of applicant and applicant's SARC (commanding officer, street, city, state, ZIP code, country); position level (Level I, II, III, or IV); certificates of training; date of application; verification of sexual assault victim advocacy experience (position, dates, hours, supervisor; name, title, and work telephone number of verifier); evaluation of sexual assault victim advocacy experience (description of applicant skills, abilities, and experience; name, title, and office of evaluator), letters of recommendation by the first person in the chain of command, SARC, and the Senior Commander or the Commander; verification of assignment eligibility screening by the Commander or appointing authority; supervisor and commander statement of understanding, documentation of continuing education training courses; D–SAACP identification (ID) number.

RECORD SOURCE CATEGORIES:

The individual, first person in chain of command or SARC and the Senior Commander or Commander, and the National Advocate Credentialing Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted in accordance with 5 U.S.C. 552a(b), the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors responsible for performing or working on contracts for the DoD when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure that apply to DoD officers and employees.

b. To the Department of Justice, Justice Programs, Office for Victims of Crime for the purpose of verifying certified SARCs and SAPR VAs for participation in Advance Military Sexual Assault Advocate Online Training.

c. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

d. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential

litigation to which the record is pertinent.

e. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper file folders and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

First and last name, and/or D–SAACP ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Cut off annually. Destroy 3 years after cutoff or 1 year upon employee separation or when superseded or obsolete, whichever comes first.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a controlled facility that employs physical restrictions such as double locks and is accessible only to authorized persons with key fobs. Access to electronic data files in the system is role-based, restricted to essential personnel only, and requires two factor authentication. The data server is locked in a windowless room with restricted access. Data is encrypted, and backup data is also encrypted and removed to an off-site secure location for storage. Paper files are stored in a locked filing cabinet in a locked room in the controlled facility. System access to case files will be limited to computers within a closed network and not connected to the internet or other servers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the OSD/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should include the individual's full name, and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, for contesting contents, and for appealing initial agency determinations are contained in 32 CFR part 310; or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Sexual Assault Prevention and Response Office, ATTN: D–SAACP Manager, 4800 Mark Center Drive, Alexandria, VA 22350–1500. Signed, written requests should contain first and last name, and/or D–SAACP ID number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

November 16, 2015, 80 FR 70765.

[FR Doc. 2020–21010 Filed 9–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). The SEAB was reestablished pursuant to the Federal Advisory Committee Act. This notice is provided in accordance with the Act.

DATES: Tuesday, October 20, 2020; 1:00 p.m.–5:00 p.m.

ADDRESSES: The Westin Sarasota, Coral Bay Room, 100 Marina View Dr., Sarasota, Florida 34236.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the sixth meeting of existing and new members under Secretary Perry and now Secretary Brouillette.

Tentative Agenda: The meeting will start at 1:00 p.m. on October 20th. The tentative meeting agenda includes: Introduction of SEAB's members, remarks from the Secretary and Deputy Secretary, discussion on four reports from the SEAB working groups: AI/ML, Branding, Space and Innovation, and an opportunity for comments from the public. The meeting will conclude at 5:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Kurt Heckman no later than 5:00 p.m. on Wednesday, October 14, 2020, by email at: *seab@hq.doe.gov.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5:00 p.m. on Wednesday, October 14, 2020.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Kurt Heckman, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Heckman. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on September 17, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–20927 Filed 9–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, October 14, 2020; 11:45 a.m.–5:15 p.m. EST; Thursday, October 15, 2020; 11:45 a.m.–5:30 p.m. EST.

ADDRESSES: Due to ongoing precautionary measures surrounding the spread of COVID–19, the October meeting of the EAC will be held via WebEx video and teleconference. In order to track all participants, the Department is requiring that those wishing to attend register for the meeting here: *https://www.energy.gov/oe/october-14-15-2020-meeting-electricity-advisory-committee.* Please note, you must register for each day you would like to attend.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–5260 or Email: *christopher.lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

Tentative Agenda

October 14, 2020

11:45 a.m.–12:00 p.m. WebEx Attendee Sign-On
12:00 p.m.–12:20 p.m. Welcome, Introductions, Developments since the August 2020 Meeting
12:20 p.m.–12:40 p.m. Update on Office of Electricity Programs and Initiatives
12:40 p.m.–1:20 p.m. Overview of Defense Critical Electric Infrastructure (DCEI) Strategy
1:20 p.m.–2:30 p.m. Moderated Roundtable Discussion Regarding DCEI Strategy
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–4:00 p.m. State-Federal Coordination Issues Discussion Among EAC Members
4:00 p.m.–4:30 p.m. Energy Storage Subcommittee Report
4:30 p.m.–5:00 p.m. Smart Grid Subcommittee Update
5:00 p.m.–5:15 p.m. Wrap-up and Adjourn Day 1

October 15, 2020

11:45 a.m.–12:00 p.m. WebEx Attendee Sign-On
12:00 p.m.–12:10 p.m. Welcome
12:10 p.m.–12:40 p.m. Update on the Bulk Power System Executive Order Implementation
12:40 p.m.–1:00 p.m. Break
1:00 p.m.–1:50 p.m. Panel: Big Data Analytics in the Utility Setting: The experiences, barriers and future needs—Panel 1: Transmission and Distribution
1:50 p.m.–2:40 p.m. Moderated Roundtable Discussion Between DOE and EAC Regarding Grid Modernization and Planning Activities
2:40 p.m.–2:50 p.m. Break
2:50 p.m.–3:40 p.m. Panel: Big Data Analytics in the Utility Setting: The experiences, barriers and future needs—Panel 2: Operators, Municipal and Cooperative Utilities
3:40 p.m.–4:30 p.m. Q&A and Moderated Discussion with Panel 2
4:30 p.m.–4:50 p.m. Break
4:50 p.m.–5:10 p.m. Public Comments
5:10 p.m.–5:30 p.m. Wrap-up and Adjourn

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings, no advanced registration is required. Individuals who wish to offer public comments at the EAC meeting may do so on October 15, 2020, but must register in advance. Approximately 20 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by ''Electricity Advisory Committee October 2020 Meeting,'' to Mr. Christopher Lawrence at *Christopher.lawrence@hq.doe.gov.*

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Christopher Lawrence at the address above.

Signed in Washington, DC, on September 17, 2020.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–20926 Filed 9–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2020–004; EERE–2020–BT–WAV–0021]

Energy Conservation Program: Notice of Petition for Waiver of GE Appliances, a Haier Company From the Department of Energy Room Air Conditioner Test Procedure and Notice of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver and interim waiver from GE Appliances, a Haier Company, which seeks a waiver for specified room air conditioner basic models from the U.S. Department of Energy (''DOE'') test procedure used for determining the efficiency of room air conditioners. DOE also gives notice of an Interim Waiver Order that requires GEA to test and rate the specified room air conditioner basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning GEA's petition and suggested alternate test procedure so as to inform DOE's final decision on GEA's waiver request.

DATES: The Interim Waiver Order is effective on September 23, 2020. Written comments and information will be accepted on or before October 23, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2020–004'', and Docket number ''EERE–2020–BT–WAV–0021,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: GERAC2020WAV0021@ee.doe.gov.* Include Case No. 2020–004 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2020–004, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0021.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.* Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing GE Appliances, a Haier Company's [1] (''GEA'') petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv), absent any information for which GEA requested treatment as confidential business information. DOE invites all interested parties to submit in writing by October 23, 2020, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is John T. Schlafer, *john.schlafer@geappliances.com,* Appliance Park—AP2–225, Louisville, KY 40225.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your complete contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

[1] The petition was filed under the company name GE Appliances, a Haier Company. DOE notes that the official company name is Haier US Appliance Solutions. For the purpose of this notice and the interim order, DOE uses the name as provided in the petition and treats the two names as synonymous.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on September 18, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 18, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Case Number 2020–004

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA. Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include room air conditioners, the subject of this Interim Waiver Order. (42 U.S.C. 6292(a)(2))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for room air conditioners is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430 subpart B appendix F, ''Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners'' (''appendix F'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. GEA's Petition for Waiver and Interim Waiver

On June 2, 2020, GEA filed a petition for waiver and interim waiver from the test procedure for room air conditioners set forth at appendix F. (GEA, No. 1 at pp. 1–4) [4] Appendix F requires testing in the full-load condition and according to GEA does not take into account the energy savings achieved by variable-speed compressors under part-load conditions.[5] Appendix F requires testing room air conditioners only with full-load performance, in part, as a result of DOE having previously concluded that developing a part-load metric for this product was not likely to stimulate widespread use of part-load technology. 76 FR 972, 1016 (Jan. 6, 2011).

GEA states the basic models listed in its petition adjust their compressor speed based on detected conditions, which results in more efficient operation under part-load conditions. GEA claims that these speed adjustments allow the compressor to run for longer periods without cycling on and off, improving efficiency in a way that is not currently captured by the DOE test procedure.

GEA also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(2).

DOE understands that, absent an interim waiver, the test procedure does not accurately measure the energy consumption of variable-speed room air conditioners, and without a test procedure waiver, the part-load characteristics of the basic models identified in GEA's petition would not be captured.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)) Consistency is important when making representations about the energy efficiency of products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to its regulations at 10 CFR 430.27, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

GEA seeks to use an alternate test procedure to test and rate specific room air conditioner basic models that is the same as the alternate test procedure prescribed in a Decision and Order granted to LG Electronics U.S.A., Inc., published on May 8, 2019 (84 FR 20111; ''LG Waiver'') and a Decision and Order granted to GD Midea Air Conditioning Equipment Co., Ltd, published on May 26, 2020 (85 FR 31481; ''Midea Waiver'').[6] The LG Waiver and Midea Waiver each require testing certain basic models of variable-speed room air conditioners according to the test procedure in appendix F in a modified fashion. Instead of testing at only one rating condition, these Waivers require testing at four rating conditions. 84 FR 20111, 20119; 85 FR 31481; 31486. The four test conditions GEA requests are identical to those in the LG Waiver and the Midea Waiver and are presented in Table III.1.

TABLE III.1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

Test condition	Evaporator inlet (indoor) air, °F		Condenser inlet (outdoor) air, °F		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
Test Condition 1	80	67	95	75	Full.
Test Condition 2	80	67	92	72.5	Full.
Test Condition 3	80	67	87	69	Intermediate.
Test Condition 4	80	67	82	65	Low.

[4] A notation in this form provides a reference for information that is in the docket for this test procedure waiver (Docket No. EERE–2020–BT–WAV–0021) (available at *https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0021*). This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at pages 1–4 of that document.

[5] The specific basic models for which the petition applies are basic models AHNR08AC, AHNR10AC, AHNR12AC, AHTR08AC, AHTR10AC, AHTR12AC, AKNR08AC, AKNR10AC, AKNR12AC, AHNR14AC, AHNR18AC, AHTR14AC, AHTR18AC, AKNR14AC, AKNR18AC, AHNR24AC, AHTR24AC, and AKNR24AC. GEA provided these basic model names in its June 2, 2020 petition.

[6] The alternate test procedures prescribed in the LG Waiver and Midea Waiver are substantively the same. In the Midea Waiver, DOE provided some additional clarifications and instruction regarding definitions, maintenance of compressor speed, the annual energy consumption and corresponding cost calculations, and adjustments to the CEER calculation for clarity. 85 FR 31481, 31483.

GEA requests the same test procedure as granted in the LG and Midea Waivers. That test procedure yields four individual CEER ratings, one at each test condition. A test unit's weighted-average combined energy efficiency ratio (''CEER'') metric is calculated from the individual CEER values obtained at the four rating conditions. DOE based the room air conditioner weighting factors for each rating temperature on the fractional temperature bin hours provided in Table 19 of DOE's test procedure for central air conditioners (10 CFR part 430, subpart B, appendix M (''appendix M'')). This weighted-average value is adjusted to normalize it against the expected weighted-average CEER under the same four rating conditions of a theoretical comparable single-speed room air conditioner. This theoretical air conditioner is one that at the 95-degree Fahrenheit (''°F'') test condition performs the same as the variable-speed test unit, but with differing performance at the other rating conditions. The differing performance is due to optimization of the refrigeration system efficiency through compressor speed adjustments to eliminate cycling losses and better match the cooling load. Determining the test unit's final rated CEER value under the procedure GEA requested involves multiplying a performance adjustment factor with the measured performance of the variable-speed room air conditioner when tested at the 95 °F rating condition according to appendix F. The performance adjustment factor, derived from testing at the multiple rating conditions, reflects the average performance improvement due to the variable-speed compressor across multiple rating conditions. GEA states that this approach takes into account performance and efficiency improvements associated with variable-speed room air conditioners.

IV. Interim Waiver Order

DOE has reviewed GEA's application for an interim waiver, the alternate test procedure requested by GEA, and performance data for the models listed by GEA in its petition. Based on this review, the alternate test procedure requested by GEA, along with the additional clarification and detail provided in the Midea Waiver and one additional clarification that the electrical power input in 10 CFR 430.23(f)(3)(i) is in units of watts, appears to allow for the accurate measurement of the energy efficiency of the listed basic models of room air conditioners, while alleviating the testing problems associated with GEA's implementation of room air conditioner testing for these basic models. Consequently, DOE has determined that it likely will grant GEA's petition for waiver. Furthermore, DOE has determined that it is desirable for public policy reasons to grant GEA immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

(1) GEA must test and rate the following room air conditioner basic models with the alternate test procedure set forth in paragraph (2).

Brand	Basic model
GE	AHNR08AC
GE	AHNR10AC
GE	AHNR12AC
GE	AHTR08AC
GE	AHTR10AC
GE	AHTR12AC
GE	AKNR08AC
GE	AKNR10AC
GE	AKNR12AC
GE	AHNR14AC
GE	AHNR18AC
GE	AHTR14AC
GE	AHTR18AC
GE	AKNR14AC
GE	AKNR18AC
GE	AHNR24AC
GE	AHTR24AC
GE	AKNR24AC

(2) The alternate test procedure for the GEA basic models listed in paragraph (1) of this Interim Waiver Order is the test procedure for room air conditioners prescribed by DOE at 10 CFR part 430, subpart B, appendix F and 10 CFR 430.23(f), with the following two exceptions: (i) Determine the CEER as detailed below, and (ii) Calculate the average annual energy consumption referenced in 10 CFR 430.23(f)(3) as detailed below. In addition, for each basic model listed in paragraph (1), at each test condition maintain compressor speeds and control settings for the variable components according to the instructions GEA submitted to DOE *(https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0021-0001*). All other requirements of appendix F and DOE's regulations remain applicable.

In 10 CFR 430.23, in paragraph (f) revise paragraph (3)(i) to read as follows:

The electrical power input in watts as calculated in section 5.2.1 of appendix F to this subpart divided by 1,000 to convert the power to kilowatts, and

In 10 CFR 430.23, in paragraph (f) revise paragraph (5) to read as follows:

(5) Calculate the combined energy efficiency ratio for room air conditioners, expressed in Btu's per watt-hour, as follows:

(i) Calculate the quotient of:

(A) The cooling capacity as determined at the 95 °F outdoor test condition, $Capacity_1$, in Btus per hour, as measured in accordance with section 5.1 of appendix F to this subpart multiplied by the representative average-use cycle of 750 hours of compressor operation per year, divided by

(B) The combined annual energy consumption, in watt-hours, which is the sum of the annual energy consumption for cooling mode, calculated in section 5.4.2 of appendix F to this subpart for test condition 1 in Table 1 of appendix F to this subpart, and the standby mode and off mode energy consumption, as measured in accordance with section 5.3 of appendix F to this subpart. Multiply the sum of the annual energy consumption in cooling mode and standby mode and off mode energy consumption by a conversion factor of 1,000 to convert kilowatt-hours to watt-hours.

(ii) Multiply the quotient calculated in paragraph (f)(5)(i) of this section by (1 + Fp), where Fp is the variable-speed room air conditioner unit's performance adjustment factor as calculated in section 5.4.8 of appendix F to this subpart.

(iii) Round the resulting value from paragraph (f)(5)(ii) of this section to the nearest 0.1 Btu per watt-hour.

In 10 CFR part 430, subpart B, appendix F:

Add in Section 1, *Definitions:*

1.8 ''Single-speed'' means a type of room air conditioner that cannot automatically adjust the compressor speed based on detected conditions.

1.9 ''Variable-speed'' means a type of room air conditioner that can automatically adjust the compressor speed based on detected conditions.

1.10 ''Full compressor speed (full)'' means the compressor speed specified by GE Appliances, a Haier Company (*https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0021-0001*) at which the unit operates at full load testing conditions.

1.11 ''Intermediate compressor speed (intermediate)'' means the compressor speed higher than the low compressor speed by one third of the difference between low compressor speed and full compressor speed with a tolerance of plus 5 percent (designs with non-discrete compressor speed stages) or the next highest inverter frequency step (designs with discrete compressor speed steps).

1.12 ''Low compressor speed (low)'' means the compressor speed specified by GE Appliances, a Haier Company (*https://www.regulations.gov/*

docket?D=EERE-2020-BT-WAV-0021-0001) at which the unit operates at low load test conditions, such that $Capacity_4$, the measured cooling capacity at test condition 4 in Table 1 of this appendix, is no less than 47 percent and no greater than 57 percent of $Capacity_1$, the measured cooling capacity with the full compressor speed at test condition 1 in Table 1 of this appendix.

1.13 ''Theoretical comparable single-speed room air conditioner'' means a theoretical single-speed room air conditioner with the same cooling capacity and electrical power input as the variable-speed room air conditioner unit under test, with no cycling losses considered, at test condition 1 in Table 1 of this appendix.

Add to the end of Section 2.1 *Cooling:*

For the purposes of this waiver, test each unit following the cooling mode test a total of four times: one test at each of the test conditions listed in Table 1 of this appendix, consistent with section 3.1 of this appendix.

Revise Section 3.1, *Cooling mode,* to read as follows:

Cooling mode. Establish the test conditions described in sections 4 and 5 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3), with the following exceptions: Conduct the set of four cooling mode tests with the test conditions in Table 1 of this appendix. Set the compressor speed required for each test condition in accordance with instructions GE Appliances, a Haier Company provided to DOE (*https://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0021-0001*).

TABLE 1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

Test condition	Evaporator inlet (indoor) air, °F		Condenser inlet (outdoor) air, °F		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
Test Condition 1	80	67	95	75	Full.
Test Condition 2	80	67	92	72.5	Full.
Test Condition 3	80	67	87	69	Intermediate.
Test Condition 4	80	67	82	65	Low.

Replace Section 5.1 to read as follows:

Calculate the condition-specific cooling capacity (expressed in Btu/h), $Capacity_{tc}$, for each of the four cooling mode rating test conditions (tc), as required in section 6.1 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3). Notwithstanding the requirements of 10 CFR 430.23(f), when reporting cooling capacity pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f), use the cooling capacity determined for test condition 1 in Table 1 of this appendix.

Replace Section 5.2 to read as follows:

Determine the condition-specific electrical power input (expressed in watts), P_{tc}, for each of the four cooling mode rating test conditions, as required by section 6.5 of ANSI/AHAM RAC–1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3). Notwithstanding the requirements of 10 CFR 430.23(f), when reporting electrical power input pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(5), use the electrical power input value measured for test condition 1 in Table 1 of this appendix. Notwithstanding the requirements of 10 CFR 430.23(f), when calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(3), use the weighted electrical power input, P_{wt}, calculated in section 5.2.1 of this appendix, as the electrical power input.

Insert a new Section 5.2.1:

5.2.1 *Weighted electrical power input.* Calculate the weighted electrical power input in cooling mode, P_{wt}, expressed in watts, as follows:

$$P_{wt} = \sum_{tc} P_{tc} \times W_{tc}$$

Where:

P_{wt} = weighted electrical power input, in watts, in cooling mode.

P_{tc} = electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix.

W_{tc} = weighting factors for each cooling mode test condition: 0.05 for test condition 1, 0.16 for test condition 2, 0.31 for test condition 3, and 0.48 for test condition 4.

tc represents the cooling mode test condition: ''1'' for test condition 1 (95 °F condenser inlet dry-bulb temperature), ''2'' for test condition 2 (92 °F), ''3'' for test condition 3 (87 °F), and ''4'' for test condition 4 (82 °F).

Add a new Section 5.4, following Section 5.3 *Standby mode and off mode annual energy consumption:*

5.4 *Variable-speed room air conditioner unit's performance adjustment factor.* Calculate the performance adjustment factor (Fp) as follows:

5.4.1 *Theoretical comparable single-speed room air conditioner.* Calculate the cooling capacity, expressed in British thermal units per hour (Btu/h), and electrical power input, expressed in watts, for a theoretical comparable single-speed room air conditioner at all cooling mode test conditions.

$$Capacity_{ss\_tc} = Capacity_1 \times (1 + (M_c \times (95 - T_{tc})))$$

$$P_{ss\_tc} = P_1 \times (1 - (M_p \times (95 - T_{tc})))$$

Where:

$Capacity_{ss\_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, calculated for each of the cooling mode test conditions in Table 1 of this appendix.

$Capacity_1$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, measured in section 5.1 of this appendix for test condition 1 in Table 1 of this appendix.

P_{ss_tc} = theoretical comparable single-speed room air conditioner electrical power input, in watts, calculated for each of the cooling mode test conditions in Table 1 of this appendix.

P_1 = variable-speed room air conditioner unit's electrical power input, in watts, measured in section 5.2 of this appendix for test condition 1 in Table 1 of this appendix.

M_c = adjustment factor to determine the increased capacity at lower outdoor test conditions, 0.0099.

M_p = adjustment factor to determine the reduced electrical power input at lower outdoor test conditions, 0.0076.

T_{tc} = condenser inlet dry-bulb temperature for each of the test conditions in Table 1 of this appendix (in °F).

95 is the condenser inlet dry-bulb temperature for test condition 1 in Table 1 of this appendix, 95 °F.

tc as explained in section 5.2.1 of this appendix.

5.4.2 *Variable-speed room air conditioner unit's annual energy consumption for cooling mode at each*

cooling mode test condition. Calculate the annual energy consumption for cooling mode under each test condition, AEC_{tc}, expressed in kilowatt-hours per year (kWh/year), as follows:

$AEC_{tc} = 0.75 \times P_{tc}$

Where:

AEC_{tc} = variable-speed room air conditioner unit's annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

P_{tc} as defined in section 5.2.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 is 750 annual operating hours in cooling mode multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

5.4.3 *Theoretical comparable single-speed room air conditioner annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for a theoretical comparable single-speed room air conditioner for cooling mode under each test condition, AEC_{ss_tc}, expressed in kWh/year.

$AEC_{ss\_tc} = 0.75 \times P_{ss\_tc}$

Where:

AEC_{ss_tc} = theoretical comparable single-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

P_{ss_tc} = theoretical comparable single-speed room air conditioner electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix, calculated in section 5.4.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.4 *Variable-speed room air conditioner unit's combined energy efficiency ratio at each cooling mode test condition.* Calculate the variable-speed room air conditioner unit's combined energy efficiency ratio, $CEER_{tc}$, for each test condition, expressed in Btu/Wh.

$$CEER_{tc} = \frac{Capacity_{tc}}{\left(\frac{AEC_{tc} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{tc}$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, measured in section 5.1 of this appendix.

AEC_{tc} = variable-speed room air conditioner unit's annual energy consumption, in kWh/yr, in cooling mode for each test condition in Table 1 of this appendix, calculated in section 5.4.2 of this appendix.

E_{TSO} = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, calculated in section 5.3 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.5 *Theoretical comparable single-speed room air conditioner combined energy efficiency ratio at each cooling mode test condition.* Calculate the combined energy efficiency ratio for a theoretical comparable single-speed room air conditioner, $CEER_{ss\_tc}$, for each test condition, expressed in Btu/Wh.

$$CEER_{ss\_tc} = \frac{Capacity_{ss\_tc}}{\left(\frac{AEC_{ss\_tc} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{ss\_tc}$ = theoretical comparable single-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{ss\_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, in Btu/h, calculated in section 5.4.1 of this appendix.

AEC_{ss_tc} = theoretical comparable single-speed room air conditioner annual energy consumption for each test condition in Table 1 of this appendix, in kWh/year, calculated in section 5.4.3 of this appendix.

E_{TSO} = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, calculated in section 5.3 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.6 *Theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio for each cooling mode test condition.* Calculate the adjusted combined energy efficiency ratio for a theoretical comparable single-speed room air conditioner, $CEER_{ss\_tc\_adj}$, with cycling losses considered, expressed in Btu/Wh.

$CEER_{ss\_tc\_adj} = CEER_{ss\_tc} \times CLF_{tc}$.

Where:

$CEER_{ss\_tc\_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$CEER_{ss\_tc}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix, calculated in section 5.4.5 of this appendix.

CLF_{tc} = cycling loss factor for each cooling mode test condition: 1 for test condition 1, 0.971 for test condition 2, 0.923 for test condition 3, and 0.875 for test condition 4.

tc as explained in section 5.2.1 of this appendix.

5.4.7 *Weighted combined energy efficiency ratio.* Calculate the weighted combined energy efficiency ratio for the variable-speed room air conditioner unit, $CEER_{wt,}$ and theoretical comparable single-speed room air conditioner, $CEER_{ss\_wt}$, expressed in Btu/Wh.

$$CEER_{wt} = \sum_{tc} CEER_{tc} \times W_{tc}$$

$$CEER_{ss\_wt} = \sum_{tc} CEER_{ss\_tc\_adj} \times W_{tc}$$

Where:

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{ss\_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, calculated in

section 5.4.4 of this appendix.

$CEER_{ss\_tc\_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, calculated in section 5.4.6 of this appendix.

W_{tc} as defined in section 5.2.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

5.4.8 *Variable-speed room air conditioner unit's performance adjustment factor.* Calculate the variable-speed room air conditioner unit's performance adjustment factor, $F_{p.}$

$$F_p = \frac{(CEER_{wt} - CEER_{ss\_wt})}{CEER_{ss\_wt}}$$

Where:

F_p = variable-speed room air conditioner unit's performance adjustment factor.

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh, calculated in section 5.4.7 of this appendix.

$CEER_{ss\_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh, calculated in section 5.4.7 of this appendix.

(3) *Representations.* GEA may not make representations about the efficiency of a basic model listed in paragraph (1) for compliance, marketing, or other purposes unless that the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, test data, and documents provided by GEA are valid. If GEA makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and GEA will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, GEA may request that DOE rescind or modify the Interim Waiver Order if GEA discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) GEA remains obligated to fulfill any certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. GEA may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of room air conditioners. Alternatively, if appropriate, GEA may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signed in Washington, DC, on September 18, 2020.

Alexander N. Fitzsimmons,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

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June 2, 2020

Via Email (*AS_Waiver_Requests@ee.doe.gov*)

Mr. Daniel Simmons
Assistant Secretary of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Building Technologies Program, Test Procedure Waiver
1000 Independence Avenue SW
Mailstop EE–5B,
Washington, DC 20585

Re: Petition for Waiver & Application for Interim Waiver Regarding Test Procedure for Room Air Conditioners, Using 10 CFR part 430, subpart B, Appendix F.

Dear Asst. Sec. Simmons:

GE Appliances, a Haier company (GEA) respectfully submits this Petition for Waiver and Application for Interim Waiver from the Department of Energy (DOE) test procedure for Room Air Conditioners in 10 CFR 430 Subpart B, Appendix F. GEA's request is fully consistent with the previously granted interim waivers provided to LG Electronics USA, Inc. ''LG'' [Case Number 2018–003; EERE–2018–BT–WAV–0006] 84 FR 20111 and GD Midea Air Conditioning Equipment Co. LTD ''Midea'' [Case Number 2019–004; EERE–2019–BT– WAV–0009] 85 FR 31481.

GEA requests this waiver and interim waiver for the same reason as LG and Midea: The current test procedure does not accurately measure energy consumption for room air conditioners with Variable Speed Compressors (VSCs). GEA requests expedited treatment of this Petition and Application as DOE has considered this exact issue twice before and approved both petitions.

1. About GE Appliances

GEA is a leading, US manufacturer of home appliances. GEA offers a full suite of major appliances across seven brands as well as portable appliances. GEA has been a participant in and contributor to the DOE's home appliance energy conservation program since its founding more than 40 years ago. Indeed, GEA supports the goal of the appliance efficiency program: maximizing energy savings improvements that offer consumers real economic benefits and that do not diminish product performance. GEA devotes substantial resources to the development of new technologies to increase energy efficiency where they are feasible and engineering products to meet the demanding DOE energy efficiency requirements.

2. Basic Models for Which a Waiver Is Requested

This Petition for Waiver and Application for Interim Waiver covers the residential room air conditioner basic models listed below.

Product Class 3 Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	Product Class 4 Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	Product Class 5 Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h
AHNR08AC	AHNR14AC	AHNR24AC.
AHNR10AC	AHNR18AC	AHTR24AC.
AHNR12AC	AHTR14AC	AKNR24AC.
AHTR08AC	AHTR18AC.	
AHTR10AC	AKNR14AC.	

Product Class 3 Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	Product Class 4 Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	Product Class 5 Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h
AHTR12AC AKNR08AC. AKNR10AC. AKNR12AC.	AKNR18AC.	

The basic models will be distributed in commerce under the brand name ''GE''.

3. Design Characteristic Constituting Grounds for the Petition

The basic models listed utilize a VSC design. The models automatically adjust compressor speed based on detected conditions allowing for more efficient operation under part-load conditions. The compressor varies its rotational speed based on the heating load in the room. As the outdoor temperature drops, the heat load on the room drops as well. The air conditioner detects this changing heat load by comparing room temperature to a consumer setpoint. As the room temperature approaches the consumer setpoint, the compressor speed slows and thus reduces cooling capacity and input watts. This allows the compressor to run longer periods without cycling on and off, which improves efficiency and results in energy savings. This improvement in efficiency is not captured in the current DOE test procedure, which allows for testing at full-load performance only. The current DOE test procedure disincentivizes manufacturers from bringing this energy saving technology to the market. Without a waiver, the energy savings of this technology cannot be communicated to consumers and the increased cost to manufacture these more efficient units cannot be recouped by manufacturers.

4. Requirements Sought To Be Waived

The current test procedure in Appendix F requires testing in the full-load condition and does not take into account the energy savings achieved with the part-load characteristics of VSCs. As DOE stated when granting this same petition for LG, ''DOE agrees that the current test procedure produces test results that are unrepresentative of actual energy use, and accordingly energy efficiency, for variable-speed room air conditioners''. 84 FR 20113. Without a waiver, the basic models referenced above cannot be accurately tested and rated for energy consumption.

5. Manufacturers of All Other Basic Models With Similar Design Characteristics

To GEA's knowledge, the only other models with similar design characteristic are those listed in LG's and Midea's granted waivers, which are cited above.

6. The Proposed Alternate Test Procedure Has Been Approved Twice by DOE

GEA requests that the alternate test procedure prescribed by DOE in the LG waiver order at 84 FR 20118–20121 be used to measure the energy efficiency for the basic models referenced above. The approach and test procedure specified in the order cover room air conditioners with VSCs and are applicable to the referenced basic models' design. The alternate test procedure requires testing at four test conditions as specified in Table 1 of the LG waiver order. These conditions reflect operation under part-load conditions and more accurately measure energy consumption for the basic models.

The test setup instructions for maintaining the compressor speeds at each test condition when testing in accordance with this waiver request are included in Exhibit A. Initial test data from tests conducted on select basic models in accordance with this waiver request are included in Exhibit B. The documents in Exhibits A and B have been marked as confidential business information pursuant to 10 CFR 1004.11.

7. The Application for Interim Waiver Should Be Granted

a. The Petition for Waiver Will Likely Be Successful

This Petition for Waiver is likely to be granted as substantively identical waivers have already been granted to LG and Midea. Further, the waiver is needed as there is no dispute among stakeholders, as seen in the responses to the LG and Midea waiver requests, that the current test method does not accurately measure the energy consumption for the basic models and the proposed alternate method provides a means of accurate measurement. The alternate test procedure, previously approved by DOE, is applicable to the basic models' design characteristics and will evaluate the performance of the models in a manner representative of the actual energy consumption.

b. Failure To Provide and Interim Waiver Will Cause Economic Hardship and Competitive Disadvantage

If DOE does not promptly grant an interim waiver, GEA will likely be unable to incorporate VSCs into its room air conditioners for the 2021 season. The design and manufacture of room air conditioners requires long lead times and significant capital investments for design changes of this nature. Without prompt action by DOE, consumers will likely be deprived of greater choice for more energy efficient room air conditioners. Further, the failure to quickly grant an interim waiver will provide unreasonable competitive advantage to other manufacturers who have already been granted substantively identical waivers.

8. Notice to Other Manufacturers

Pursuant to 10 CFR 430.27(c), upon publication of a grant of interim waiver, GEA will notify in writing all known manufacturers of domestically marketed basic models of the same product class (as specified in 10 CFR 430.32) and of other product classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice will include a statement that DOE has published the interim waiver and petition for waiver in the **Federal Register** and the date the petition for waiver was published. The notice will also include a statement that DOE will receive and consider timely written comments on the petition for waiver. Within five working days of publication of the grant of interim waiver, GEA will file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver was sent.

9. Conclusion

GEA respectfully requests that DOE grant this Petition for Waiver and Application for Interim Waiver from the current test procedure for the specified basic models. As DOE has already twice reviewed and approved identical requests for other manufacturers, GEA

requests expedited review and approval of the application for Interim Waiver. DOE's approval of GEA's request will ensure consumers have the greatest access to this important, energy-saving technology.

Very truly yours,

John T. Schlafer

Attachments:

Exhibit A—Test Setup Instructions
Exhibit B—Preliminary Test Data

Exhibit A—Test Setup Instructions

[Redacted]

Exhibit B—Preliminary Test Data

[Redacted]

[FR Doc. 2020–20994 Filed 9–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–1195–000]

Rockies Express Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on September 15, 2020, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2020), Rockies Express Pipeline LLC (Rockies Express) filed a petition for a declaratory order seeking a Commission order holding that if Gulfport Energy Corporation (Gulfport) files for bankruptcy, the Commission will have concurrent jurisdiction, under Sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and 717d (2018), with U.S. Bankruptcy Courts with respect to Rockies Express' three negotiated rate, anchor shipper, firm transportation service agreements with Gulfport (Gulfport TSAs). The petition also requests that the Commission exercise that jurisdiction to establish an adjudicative proceeding to affirm that continued performance under the Gulfport TSAs does not seriously harm the public interest and that any party wishing to abrogate the Gulfport TSAs carries the burden of establishing that the public interest mandates such abrogation, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 21, 2020.

Dated: September 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20984 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–092]

Duke Energy Progress, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Temporary variance of lake level elevation.

b. *Project No.:* 2206–092.

c. *Date Filed:* May 12, 2020 and supplemented September 3, 2020.

d. *Applicant:* Duke Energy Progress, LLC.

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* The project is located on the Yadkin-Pee Dee River in Anson, Montgomery, Richmond, and Stanly counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Tami Styer, 526 South Church Street/EC12Y, Charlotte, NC 28202, (704) 382–0293.

i. *FERC Contact:* Korede Olagbegi, (202) 502–6268, *Korede.Olagbegi@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance of this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2206–092. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary variance to maintain the water elevation at the Blewett Falls Lake below the current license limits in order to allow for spillway modifications to take place at the Blewett Falls Dam. The current license generally allows the water level to fluctuate up to 6 feet below full pond, between an elevation of 172.1 and 178.1 feet National Geodetic Vertical Datum of 1929 (NGVD 29). When the flashboards on the spillway need to be replaced, an additional drawdown of 2 feet, to an elevation of 170.1 feet NGVD 29 is allowed. To complete the work on the spillway, the applicant is proposing to lower the Blewett Falls lake level up to an additional 1 foot below this maximum allowance, or 9 feet below full pond, to an elevation of 168.1 feet NGVD 29. The applicant proposes to maintain this lowered water elevation for a period beginning in October 2020 and lasting for 24 months, and states that maintaining the elevation at this level is needed to provide its contractor safe access to the spillway crest for the duration of the work associated with the spillway. During this time, the applicant states that the boat ramp at the Pee Dee Access area will remain usable, but the boat ramp at the Grassy Island Access area will be closed.

l. *Locations of the Applications:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov or call toll free,* (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions To Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20988 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1194–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing [PRO FORMA] TETLP ASA Settlement Compliance Filing—RP19–343–006 to be effective 12/31/9998.

Filed Date: 9/16/20.

Accession Number: 20200916–5000.

Comments Due: 5 p.m. ET 9/28/20.

Docket Numbers: RP20–1196–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Compliance filing Annual Cash-Out Report Period Ending July, 31, 2020 to be effective N/A.

Filed Date: 9/16/20.

Accession Number: 20200916–5032.

Comments Due: 5 p.m. ET 9/28/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20976 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–460–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Clifton to Palmyra A-Line Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Clifton to Palmyra A-Line Abandonment Project, proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon in-place a segment of its A-Line pipeline from Clifton, Kansas to Palmyra, Nebraska and increase compression capacity at its existing Beatrice Compressor Station near Beatrice, Nebraska.

The EA assesses the potential environmental effects of the construction and operation of the Clifton to Palmyra A-Line Abandonment Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate

mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Clifton to Palmyra A-Line Abandonment Project includes the following activities:

- Disconnect the existing 24-inch-diameter M600A and the existing 20-inch-diameter M600J at Northern's existing Clifton Compressor Station;
- disconnect the existing 24-inch-diameter M590A and the existing 24-inch-diameter M600A at Northern's existing Beatrice Compressor Station;
- disconnect the existing 24-inch-diameter M590A at Northern's existing Palmyra Compressor Station;
- abandon in-place 54.3 miles of existing 24-inch-diameter M600A mainline in Gage and Jefferson Counties, Nebraska, and Washington and Clay Counties, Kansas;
- abandon in-place 19.9 miles of existing 20-inch-diameter M600J mainline in Clay and Washington Counties, Kansas;
- abandon in-place 41.7 miles of existing 24-inch-diameter M590A in Otoe, Lancaster, and Gage Counties, Nebraska, between Palmyra and Beatrice, Nebraska; and
- install a new 15,900-horsepower turbine driven compressor unit at Northern's existing Beatrice Compressor Station near Beatrice, Nebraska.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/ferc-online/elibrary/overview*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP20–460). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on October 16, 2020.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–460–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: September 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20986 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15031–000]

Nevada PSH Energy Storage LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 27, 2020, the Nevada PSH Energy Storage LLC, filed an application for a preliminary permit, and resubmitted on June 18, 2020, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Ruby Hill Pumped Hydro Energy Storage Project to be located in Eureka, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit

term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located at the existing Ruby Hill Mine an existing open pit mine with the pump storage utilizing and existing deep open pit mine for the lower reservoir and an earthen dam for the upper reservoir. The project consist of the following new facilities: (1) A 3,474-foot-long, 30-meter-high earthen dam (Upper Reservoir) with a surface area of 20 acres; and a total storage capacity of 1,941 acre-feet at a normal maximum surface elevation of 1,231 feet average mean sea level (msl); (2) an existing open pit mine (Lower Reservoir) that will not require a dam with a maximum surface elevation of 1,707 average msl, and a storage capacity of 2,000 acre-feet; (3) two 4,760-foot-long, 10-foot-diameter steel penstocks; (4) an underground powerhouse housing four 50-megawatt pump turbine units at an approximate elevation of 1,670 msl, the final dimension is to be determined; (5) a single 15-foot-diameter low pressure draft tube that will extend approximately 80 feet from the powerhouse to the Lower Reservoir; (6) the initial fill water would come from water purchased from existing water right holders, with an estimated 100-gallons per minute (gpm) from Eureka wastewater treatment plant to be used as a make-up water source; (7) a 200-mega volt amp substation for converting the 20-kilovolt (kV), generator/motor voltage to 230- kV, a new 230- kV, 13,000-foot-long transmission lines that connect the new substation to the existing 230-kV transmission lines at Machacek substation, and (8) appurtenant facilities. The estimated annual power generation at the Ruby Hill Pumped Hydro Energy Storage Project would be 730 gigawatt-hours.

Applicant Contact: Mr. Michael Werner, Managing Director, Nevada PSH Energy Storage LLC. 7425 East Columbia Drive, Spokane, Washington 99212, *michaelawerner@comcast.net.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, more information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15031) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20981 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1247–001.

Applicants: Entergy Arkansas, Inc.

Description: Report Filing: EAL Refund Report (ER18–1247–001) to be effective N/A.

Filed Date: 9/16/20.

Accession Number: 20200916–5056.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2446–001.

Applicants: Bitter Ridge Wind Farm, LLC.

Description: Tariff Amendment: Deficiency Filing for Bitter Ridge Reactive Rate Schedule to be effective 9/14/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5040.

Comments Due: 5 p.m. ET 9/28/20.

Docket Numbers: ER20–2878–003.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Third Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), PWRPA 30 to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5071.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2878–004.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Fourth Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), PWRPA56 to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5075.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2878–005.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Fifth Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), S Cove to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5077.

Comments Due: 5 p.m. ET 10/7/20

Docket Numbers: ER20–2878–006.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Sixth Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), Western to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5079.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2878–007.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Seventh Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), WPA to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5082.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2878–008.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Eighth Amendment to Wholesale Distribution Tariff Rate Case 2020 (WDT3), Western to be effective 11/15/2020.

Filed Date: 9/16/20.

Accession Number: 20200916–5084.

Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2898–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5762; Queue No. AF2–282 to be effective 8/18/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5016.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2899–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5603; Queue No. AD2–065 to be effective 2/6/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5019.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2900–000

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5768; Queue No. AF2–284 to be effective 8/18/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5021.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2901–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5769; Queue No. AF2–285 to be effective 8/18/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5033.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2902–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 5283; Queue No. AD1–045 to be effective 8/14/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5038.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2903–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 16–00054; Battle Mountain LGIA 4th Amendment to be effective 9/18/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5070.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2904–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 5282; Queue No. AD1–046 re: withdrawal to be effective 10/13/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5090.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2905–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISAs, SA Nos. 3933 and 3934; Queue No. R30 to be effective 10/11/2019.

Filed Date: 9/17/20.

Accession Number: 20200917–5094.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2906–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5767; Queue No. AF2–283 to be effective 8/17/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5096.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2907–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 5281; Queue No. AD1–044 re: withdrawal to be effective 10/13/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5098.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2908–000.

Applicants: Avista Corporation.

Description: Compliance filing: Avista Corp OATT Order 845/845A Compliance Filing to be effective 10/17/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5099.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2909–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ICSA, SA No. 5215; Queue No. AB1–006 to be effective 8/21/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5100.

Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2910–000.

Applicants: Appalachian Power Company.

Description: § 205(d) Rate Filing: Notice of Cancellation AEPSC-Big Sandy Peaker Plant Interconnect/Operation Agrmt to be effective 11/21/2020.

Filed Date: 9/17/20.

Accession Number: 20200917–5103.

Comments Due: 5 p.m. ET 10/8/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–15–000.

Applicants: Suncor Energy Inc., Fort Hills Energy LP.

Description: Notice of Self-Certification of Foreign Utility Company Status of Fort Hills Energy LP, et. al.

Filed Date: 9/16/20.

Accession Number: 20200916–5065.

Comments Due: 5 p.m. ET 10/7/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20975 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15034–000]

Kinetic Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 1, 2020, the Kinetic Power LLC, filed an application for a preliminary permit, and amended on June 25, 2020, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Beclabito Hydroelectric Energy Storage Center Project to be located about 20 miles west of Shiprock, New Mexico. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located entirely on Navajo Nation lands

extending across the Arizona-New Mexico State border, consist of the following new facilities: (1) A 1,333-foot-long, 542-foot-high earthen rock fill dam (Upper Reservoir) with a surface area of 392 acres; and a total storage capacity of 35,043 acre-feet at a normal maximum operating elevation of 8,970 feet average mean sea level (msl); (2) a 1,134-foot-long, 166-foot-high earthen rock fill dam (Lower Reservoir) with a surface area of 534 acres, and a total storage capacity of 36,209 acre-feet at a normal maximum operating elevation of 5,656 feet average msl; (3) two 300-foot-long, 23-foot-diameter penstocks shafts; two 2,841-foot penstock vertical shafts; six 250-foot draft tube; and one 15,880-foot horizontal headrace tunnel with 16-foot diameter; (4) a 300-foot-long, 75-foot-wide, 160-foot-high reinforced concrete powerhouse housing six 250-megawatt fixed turbines generators; up to two 150-megawatt turbines with variable speed machines; (5) four 24,788-foot-long low pressure tailrace tunnels; (6) a 59,664-foot-long water source pipeline connecting the water pumping station located at the San Juan River to the Lower Reservoir for initial fill and make-up water; (7) two new double circuit 500-kilovolt (kV) electric transmission lines that connect the project switchyard to the propose existing uprates 500-kV transmission lines, and (8) appurtenant facilities. The estimated annual power generation at the Beclabito Energy Storage Center Project would be 2,628 gigawatt-hours.

Applicant Contact: Mr. Thomas Conroy, Co-Founder, Kinetic Power, LLC. Post Office Box 32482, Santa Fe, NM 87506, *tconroy@kineticpowerco.com.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, more information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15034) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20982 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–56–000]

PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 17, 2020, the Commission issued an order in Docket No. EL20–56–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether PJM Interconnection, L.L.C.'s Tariff may be unjust, unreasonable, unduly discriminatory, or preferential. *PJM Interconnection, L.L.C.,* 172 FERC ¶ 61,243 (2020).

The refund effective date in Docket No. EL20–56–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–56–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: September 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20977 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2444–036]

Northern States Power Company—Wisconsin; Notice of Intent to File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2444–036.

c. *Date Filed:* July 29, 2020.

d. *Submitted By:* Northern States Power Company—Wisconsin (Northern States)

e. *Name of Project:* White River Hydroelectric Project.

f. *Location:* On the White River, in Ashland County, Wisconsin. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Matthew J. Miller, Northern States Power Company—Wisconsin, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702; email—*matthew.j.miller@xcelenergy.com;* phone at (715) 737–1353; or Shawn Puzen, Mead & Hunt, Inc., 1720 Lawrence Drive, De Pere, Wisconsin 54115–3901; email *shawn.puzen@meadhunt.com;* phone at 920–593–6865.

i. *FERC Contact:* Paul Makowski at (202) 502–6836; or email at *paul.makowski@ferc.gov.*

j. Northern States filed its request to use the Traditional Licensing Process on July 29, 2020, and provided public notice of its request on the same date. In a letter dated September 16, 2020, the Director of the Division of Hydropower Licensing approved Northern States' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Wisconsin State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Northern States as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Northern States filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. The PAD is also available on the applicant's project website at *http://hydrorelicensing.com.* At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2444. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2023.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20983 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2888–000]

Townsite Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Townsite Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 7, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–20974 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–14–000]

Carbon Pricing in Organized Wholesale Electricity Markets; Supplemental Notice of Technical Conference

As announced in the Notice [1] of Technical Conference issued in this proceeding on June 17, 2020, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday, September 30, 2020, from approximately 9:00 a.m. to 6:00 p.m. Eastern time. The conference will be held electronically.

The purpose of this conference is to discuss considerations related to state-adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets (*i.e.,* regions with regional transmission organizations/independent system operators, or RTOs/ISOs). This conference will focus on carbon pricing approaches where a state (or group of states) sets an explicit carbon price, whether through a price-based or quantity-based approach, and how that carbon price intersects with RTO/ISO-administered markets, addressing both legal and technical issues.

A revised agenda and list of panelists for this conference are attached. All changes to the agenda since the Commission's August 28, 2020 Supplemental Notice of Technical Conference appear in italics.

There is no fee for attendance, and the conference will be webcast for the public to attend electronically. Information on this technical conference, including a link to the webcast, will also be posted on this conference's event page on the Commission's website, *www.ferc.gov/news-events/events/technical-conference-regarding-carbon-pricing-organized-wholesale-electricity,* prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact:

John Miller (Technical Information), Office of Energy Market Regulation, (202) 502–6016, *john.miller@ferc.gov*

Anne Marie Hirschberger (Legal Information), Office of the General Counsel, (202) 502–8387, *annemarie.hirschberger@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *sarah.mckinley@ferc.gov*

Dated: September 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20985 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 2.1 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM20–19–000]

Equipment and Services Produced or Provided by Certain Entities Identified as Risks to National Security

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on the potential risks to the bulk electric system posed by the use of equipment and services produced or provided by certain entities identified as risks to national security. In addition, the Commission seeks comments on strategies to mitigate any potential risks posed by such telecommunications equipment and services, including but not limited to potential modifications to the Critical Infrastructure Protection Reliability Standards.

DATES: Initial Comments are due November 23, 2020, and Reply Comments are due December 22, 2020.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
- *Instructions:* For detailed instructions on submitting comments, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Simon Slobodnik (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6707, *Simon.Slobodnik@ferc.gov*

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *Kevin.Ryan@ferc.gov*

1. In this Notice of Inquiry, the Commission seeks comments on the potential risks to the bulk electric system posed by using equipment and services produced or provided by entities identified as risks to national security. In addition, the Commission seeks comments on whether the current Critical Infrastructure Protection (CIP) Reliability Standards adequately mitigate the identified risks. Further, the Commission seeks comment on possible actions the Commission could consider taking to address the identified risks.

2. On October 18, 2018, the Commission approved the first set of supply chain risk management Reliability Standards in Order No. 850.[1] The Commission described the supply chain risk management Reliability Standards as ''forward-looking and objective-based and require each affected entity to develop and implement a plan that includes security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.'' [2] In approving the supply chain risk management Reliability Standards, the Commission recognized that ''the global supply chain creates opportunities for adversaries to directly or indirectly affect the management or operations of companies with potential risks to end users.'' [3]

3. Since the issuance of Order No. 850, there have been significant developments in the form of Executive

[1] The Commission approved Reliability Standards CIP–013–1 (Cyber Security—Supply chain Risk Management), CIP–005–6 (Cyber Security—Electronic Security Perimeter(s)), and CIP–010–3 (Cyber Security—Configuration Change Management and Vulnerability Assessments). *Supply Chain Risk Management Reliability Standards,* Order No. 850, 165 FERC ¶ 61,020 (2018).

[2] *Id.* P 2.

[3] *Id.*

Orders, legislation, as well as federal agency actions that raise concerns over the potential risks posed by the use of equipment and services provided by certain entities identified as risks to national security. In particular, Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) have been identified as examples of such certain entities because they provide communication systems and other equipment and services that are critical to bulk electric system reliability.[4]

4. Therefore, as discussed in this Notice of Inquiry, the Commission seeks comments on: (1) The extent of the use of equipment and services provided by certain entities identified as risks to national security related to bulk electric system operations; (2) the risks to bulk electric system reliability and security posed by the use of equipment and services provided by certain entities; (3) whether the CIP Reliability Standards adequately mitigate the identified risks; (4) what mandatory actions the Commission could consider taking to mitigate the risk of equipment and services provided by certain entities related to bulk electric system operations; (5) strategies that entities have implemented or plan to implement—in addition to compliance with the mandatory CIP Reliability Standards—to mitigate the risks associated with use of equipment and services provided by certain entities; and (6) other methods the Commission may employ to address this matter including working collaboratively with industry to raise awareness about the identified risks and assisting with mitigating actions (*i.e.,* such as facilitating information sharing). The responses to these questions will provide the Commission with a better understanding of the risks to bulk electric system reliability posed by equipment and services provided by entities identified as risks to national security, as well as how the Commission may best address any identified risks.

I. Background

A. Executive Orders on Bulk-Power System Security

5. On May 15, 2019, President Trump issued Executive Order 13,873 on ''Securing the Information and Communications Technology and Services Supply Chain.'' [5] Executive Order 13,873 declared a national emergency based on a finding that:

> foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology and services . . . in order to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its people.

To address that risk, Executive Order 13,873 directs the Secretary of Commerce, in consultation with other agency heads, to identify ''any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service . . . where the transaction involves any property in which any foreign country or a national thereof has any interest.''

6. Executive Order 13,873 directs the Secretary of Commerce, in consultation with other agency heads, to identify such prohibited transactions by determining whether: (1) The transaction involves information and communications technology or services designed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and (2) the transaction poses an undue risk of sabotage to or subversion of the design or operation of information and communications technology or services in the United States or poses an undue risk of catastrophic effects on the security of United States critical infrastructure.

7. On May 1, 2020, President Trump issued Executive Order 13,920 on ''Securing the U.S. Bulk-Power System,'' declaring a national emergency based on the findings that ''foreign adversaries are increasingly creating and exploiting vulnerabilities'' in the Bulk-Power System and that the ''unrestricted foreign supply of bulk-power system electric equipment constitutes an unusual and extraordinary threat to the national security.'' [6]

8. To address these risks, Executive Order 13,920 prohibits the acquisition, importation, transfer, or installation of any Bulk-Power System electric equipment where the transaction: (1) Involves Bulk-Power System electric equipment designed, developed, manufactured, or supplied, by a foreign adversary; and (2) the transaction poses an undue risk of sabotage to the Bulk-Power System or poses an undue risk to U.S. critical infrastructure, economy or national security. In addition, Executive Order 13,920 establishes a Task Force on Federal Energy Infrastructure Procurement Policies Related to National Security (Task Force), chaired by the Secretary of Energy.[7] The Task Force is directed to: (1) Develop energy infrastructure procurement policies for agencies; (2) evaluate methods to incorporate national security considerations into energy security and cybersecurity policymaking; (3) consult with the Electric Subsector Coordinating Council (and the oil and natural gas sector equivalent) in developing recommendations; and (4) conduct other studies and develop other recommendations as appropriate.

B. National Defense Authorization Acts

9. Recently, Congress has addressed the risks posed by the procurement of equipment and services from entities identified as risks to national security in the annual National Defense Authorization Acts.

10. The National Defense Authorization Act for Fiscal Year 2018 bars the Department of Defense from using ''[t]elecommunications equipment [or] services produced [or] provided by Huawei Technologies Company or ZTE Corporation'' for certain critical programs, including ballistic missile defense and nuclear command, control, and communications.[8]

11. In addition, the National Defense Authorization Act for Fiscal Year 2019 prohibits the Secretary of Defense from procuring or obtaining, or extending or renewing a contract to procure or obtain, equipment, systems, or services that use ''covered telecommunications equipment or services'' as a substantial or essential component of any system, or as critical technology as part of any system. Specifically, section 889(f)(3) of the 2019 NDAA defines ''covered telecommunications equipment or services'' as:

> (1) telecommunications equipment produced by Huawei or ZTE or any subsidiary or affiliate of such entities; (2) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or any subsidiary or affiliate of such entities; (3) telecommunications or video surveillance services provided by such entities or using such equipment; or (4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense . . . reasonably believes

[4] *See e.g.* John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232, 889(f)(3) (2018) (2019 NDAA).

[5] Executive Order No. 13,873, 84 FR 22689 (May 17, 2019).

[6] Executive Order No. 13,920, 85 FR 26595 (May 4, 2020).

[7] The Secretary of Energy has until September 28, 2020, to promulgate the necessary regulations. *See* Dept. of Energy, Request for Information, 85 FR 41023 (July 8, 2020) (the public comment period is open until Aug. 24, 2020).

[8] National Defense Authorization Act for Fiscal Year 2018, Public Law 115–91, 1656 (2017) (2018 NDAA).

to be an entity owned or controlled by, or otherwise connected to, the . . . People's Republic of China.[9]

C. Federal Communication Commission Orders on Communications Supply Chain

12. On June 30, 2020, the Federal Communications Commission (FCC) issued two orders designating both Huawei and ZTE as covered entities that are prohibited from receiving Universal Service Fund moneys to support the purchase of any equipment or services provided by a company posing a national security threat to the integrity of communications networks or the communications supply chain.[10] The FCC Orders determined that Huawei and ZTE pose a national security threat to the integrity of communications networks and the communications supply chain due to their close ties to the Chinese government. The FCC found that Huawei is susceptible to coercion, both legal and political, presenting profound risks to the security of affected communications networks. The FCC also found that Huawei's close ties to the Chinese government, both at the level of ownership and at the employee level, as well as its obligations under Chinese law, present too great a risk to U.S. national security to continue to subsidize the use of Huawei equipment and services.

13. Likewise, with respect to ZTE, the FCC noted the company's obligations under Chinese law to permit Chinese government entities, including state intelligence agencies, to demand that private communications sector entities cooperate with governmental requests, including revealing customer information and network traffic information. The FCC also found that security risks and vulnerabilities in ZTE's equipment pose a threat to the integrity of communications networks and the communications supply chain. The FCC, furthermore, identified various reports that identify a wide range of vulnerabilities and cybersecurity risks found in ZTE equipment, which have led to an increase in restrictions placed upon its availability in the U.S. market.

D. The 5G Ecosystem: Risks and Opportunities for the Department of Defense

14. A report by the Defense Innovation Board, titled ''The 5G Ecosystem: Risks and Opportunities for DoD,'' highlights the threats posed by China and other nation-state adversaries.[11] The report notes that ''evidence of backdoors or security vulnerabilities have been discovered in a variety of devices globally'' and that many of those vulnerabilities ''seem to be related to requirements from the Chinese intelligence community pressuring companies to exfiltrate information.'' [12] The report also highlights the need for the Department of Defense to ''consider options for defending against a compromised supply chain, where Chinese semiconductor components and chipsets are embedded across multiple systems.'' [13]

II. Discussion

A. Analysis

15. Recent Executive Orders, legislation and federal agency decisions have identified Huawei and ZTE, as well as other entities identified as risks to national security, as potential risks to national security. The FCC has gone so far as to designate both Huawei and ZTE as national security threats to the integrity of communications networks and the communications supply chain. These actions raise concerns over the potential risks to bulk electric system reliability posed by the use of equipment and services provided by Huawei, ZTE, and other entities identified as risks to national security.

16. The Commission has previously noted that responsible entities such as reliability coordinators, balancing authorities, and transmission operators must be capable of receiving and storing a variety of sensitive bulk electric system data from interconnected entities in order to adequately perform their reliability functions.[14] The critical role played by communications networks in maintaining bulk electric system reliability by, among other things, helping to maintain situational awareness and reliable bulk electric system operations through timely and accurate measurement, collection, processing of bulk electric system status and information exchange among control centers makes it necessary for the Commission to understand the risk to bulk electric system reliability posed by the use of equipment and services provided by Huawei, ZTE, and other entities identified as risks to national security.

17. There are many manufacturers of networking and telecommunications equipment, but Huawei, ZTE, and their subsidiaries are gaining substantial shares of the market globally.[15] A portion of this exposure to Huawei and ZTE stems from embedded Huawei or ZTE components in equipment produced by unaffiliated vendors. The probability that electric utilities now use a significant amount of telecommunications equipment with embedded components from Huawei or ZTE is greater in consideration of these facts, especially when factoring in components that are branded under a different vendor's label. If these obscured, or potentially unlabeled, components are present in an electric utility's infrastructure, the same risks may exist as if the hardware had been purchased directly from Huawei, ZTE, or one of their subsidiaries.

18. In addition, the Commission notes that Executive Order No. 13,920 on Securing the U.S. Bulk-Power System includes a definition for ''bulk-power system electric equipment'' that covers a range of electrical equipment commonly used in substations, generating stations, and control rooms.[16] Huawei or ZTE equipment or components that fall within these categories may also raise concerns over the potential risks to bulk electric system reliability posed by their use.

B. Request for Comments

19. The Commission seeks comment on the potential risk to bulk electric system reliability posed by the use of equipment and services provided by entities identified in section 889(f)(3) of the 2019 NDAA (Covered Companies).[17]

20. Below, we pose questions that commenters should address in their submissions. However, commenters need not address every topic or answer every question identified below. Please

[9] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232, 889(f)(3) (2018) (2019 NDAA).

[10] *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Order (Jun. 30, 2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Order (Jun. 30, 2020).

[11] The 5G Ecosystem: Risks and Opportunities for DoD, Defense Innovation Board (Apr. 3, 2019), *https://media.defense.gov/2019/Apr/03/2002109302/-1/-1/0/DIB_5G_STUDY_04.03.19.PDF.*

[12] *Id.* at 25.

[13] *Id.* at 29.

[14] *See Revised Critical Infrastructure Protection Reliability Standards,* Order No. 822, 154 FERC ¶ 61,037, at P 54, *order denying reh'g,* Order No. 822–A, 156 FERC ¶ 61,052 (2016).

[15] *See, e.g., Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE,* 112th Cong., at 2 (Oct. 8, 2012) (finding ''Chinese telecommunications firms, such as Huawei and ZTE, are rapidly becoming dominant global players in the telecommunications market'').

[16] Executive Order No. 13,920 at section 4(b), 85 FR 26595 (May 4, 2020).

[17] *See supra* P 11.

do not include confidential or proprietary information, CEII, or other sensitive or classified information in your responses.

Q1. To what extent is the equipment (including components) and services provided by Covered Companies used in the operation of the bulk electric system?

a. What methods could be used to ascertain the extent to which equipment and services provided by Covered Companies is used in the operation of the bulk electric system?

b. Describe any potential complications to system operations that may result from implementing such methods (*e.g.,* need to shut down certain activities to perform testing).

Q2. Describe the risks to bulk electric system reliability and security posed by the use of equipment and services provided by Covered Companies?

a. Describe the range of potential security impacts to bulk electric system reliability that could occur if a responsible entity uses the equipment and services provided by the Covered Companies within its real-time operations infrastructure and the equipment was compromised.

b. If equipment and services provided by Covered Companies is installed in a responsible entity's real-time operations infrastructure, what controls are in place to prevent or detect compromise? What controls are in place to mitigate the potential effects of compromise?

c. Describe the range of potential security impacts to bulk electric system reliability from a compromise of a responsible entity's systems related to non-real time bulk electric system operations (*e.g.,* operations planning) resulting from the use of equipment and services provided by Covered Companies.

d. If equipment and services provided by Covered Companies is installed in a non-real time environment (*e.g.* operations planning), what controls are in place to prevent or detect compromise? What controls are in place to mitigate the potential effects of compromise?

e. Describe the potential range of security impacts to bulk electric system reliability from a compromise of responsible entity's systems related to non-bulk electric system communications and operations (*e.g.,* business networks and systems not directly related to bulk electric system operations) resulting from the use of equipment and services provided by Covered Companies.

f. If equipment and services provided by Covered Companies is installed in a non-bulk electric system communications and operations environment (*e.g.,* business networks and systems not directly related to bulk electric system operations), what controls are in place to prevent or detect compromise? What controls are in place to mitigate the potential effects of compromise? What controls are in place to prevent compromise of business network or systems from migrating and impacting bulk electric system operations?

Q3. Discuss the effectiveness of the current CIP Reliability Standards in mitigating the risks posed by equipment and services provided by Covered Companies used in the operation of the bulk electric system.

a. Which requirements of the CIP Reliability Standards, including complementary requirements across the CIP Reliability Standards, require entities to take actions that detect and mitigate the risks associated with the use of equipment and services provided by Covered Companies?

b. What modifications to the CIP Standards would minimize risks associated with equipment and services provided by the Covered Companies?

Q4. Describe any strategies, in addition to compliance with the CIP Reliability Standards, entities have implemented or plan to implement to mitigate the risks associated with use of equipment and services provided by Covered Companies.

Q5. What other methods could the Commission employ outside the CIP Reliability Standards, whether through regulatory action or through voluntary collaboration with industry and government, to further address the risks to bulk electric system reliability and security posed by the use of equipment and services provided by Covered Companies? For example, raising awareness about the risks identified in response to the previous questions, identifying potential solutions, and assisting with mitigating actions (including the facilitating information sharing)?

a. Describe how your organization is informed of the risks to bulk electric system reliability and security posed by the use of equipment and services provided by Covered Companies and what could be done to improve this process.

b. What actions has your organization taken to address these risks and what impediments exist to do so (*i.e.,* such as procurement process requirements)?

c. What challenges does your organization face when identifying, containing or removing equipment that presents supply chain threats from Covered Companies?

III. Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 23, 2020, and Reply Comments are due December 22, 2020. Comments must refer to Docket No. RM20–19–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

22. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov.* The Commission accepts most standard word-processing formats. Documents created electronically using word-processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

23. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

24. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

25. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

26. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

27. User assistance is available for eLibrary and the Commission's web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: September 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–20987 Filed 9–22–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10013–52–Region 3]

Clean Water Act: Maryland–City of Annapolis and Anne Arundel County Vessel Sewage No-Discharge Zone for Thirteen Waters—Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative affirmative determination.

SUMMARY: Notice is hereby given that an application for a no-discharge zone has been received from the Secretary of Natural Resources and Secretary of the Environment on behalf of the State of Maryland requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency (EPA), Region 3, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for thirteen waters located in the City of Annapolis and Anne Arundel County, Maryland, pursuant to the Clean Water Act. The EPA is requesting comments on this application and whether EPA should finalize its tentative affirmative determination, or make a negative determination, on the proposed designation of a no-discharge zone for all and/or any of the thirteen waters located in the City of Annapolis and Anne Arundel County as provided in the Clean Water Act. The application is available upon request from EPA (at the email address below) or at *https://dnr.maryland.gov/boating/Documents/AANDZApplication.pdf.*

DATES: Comments must be received in writing to EPA on or before October 23, 2020.

ADDRESSES: Comments should be sent to Matthew A. Konfirst, U.S. Environmental Protection Agency—Mid-Atlantic Region, 1650 Arch Street, Mail Code 3WD31, Philadelphia, PA 19103–2029, or emailed to *konfirst.matthew@epa.gov.* Only written comments will be considered.

FOR FURTHER INFORMATION CONTACT: Matthew A. Konfirst, U.S. Environmental Protection Agency –Region III. Telephone: (215) 814–5801, Fax number: (215) 814–5007; email address: *konfirst.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed sewage no-discharge zone includes 13 water bodies wholly within Anne Arundel County (Stoney Creek, Rock Creek, Bodkin Creek, the Atlantic Marina Resort, Magothy and Little Magothy Rivers, Severn River, South River, West and Rhode Rivers, Podickory Creek, Sandy Point/Mezick Ponds, Whitehall Bay, Oyster Cove and Fishing Creek). While these waterbodies constitute nearly all of the county's waters, a few water bodies have been excluded. The exclusions include two inter-jurisdictional rivers that border the county (the Patapsco River and Patuxent River), as well as Curtis Creek, which creates additional inter-jurisdictional complications for no-discharge zone management and is also the most heavily industrialized creek in the county with limited recreational boating activity. Maryland's proposed NDZ for the 13 water bodies if approved would total 27,379 acres, which would add to the 3,500 acres of the Herring Bay no-discharge zone that was approved in 2002. (67 FR 1352, January 10, 2002). Maryland has requested that should EPA determine that one (or more) of the 13 creeks, bays, or rivers do not meet the criteria for NDZ designation, such individual part be denied independently from the remaining waters in the application as a whole. As described in Maryland's application, local entities undertook robust public outreach and held a number of public meetings with boaters and other stakeholders.

Waterbody	Waterbody limits			Area (acres)
Stony Creek	39.1723° N, 76.5171° W	to	39.1725° N, 76.5126° W	677
Rock Creek	39.1614° N, 76.5004° W	to	39.1625° N, 76.4862° W	524
South Shore, Patapsco River	39.1472° N, 76.4588° W	to	39.1471° N, 76.4587° W	2
Bodkin Creek	39.1346 ° N, 76.4398° W	to	39.1321° N, 76.4378° W	609
Magothy and Little Magothy Rivers	39.0597° N, 76.4332° W	to	39.0527° N, 76.4382° W	5,879
Podickory Creek	39.0328° N, 76.4040° W	to	39.0317° N, 76.4048° W	9
Sandy Point/Mezick Ponds	39.0082° N, 76.4031° W	to	39.0081° N, 76.4033° W	47
Whitehall Bay	39.9748° N, 76.4547° W	to	38.9871° N, 76.4268° W	1,599
Severn River	39.9748° W, 76.4547° N	to	39.9411° N, 76.4502° W	7,497
Oyster Creek	38.9273° N, 76.4628° W	to	38.9272° N, 76.4623° W	34
Fishing Creek	38.9147° N, 76.4590° W	to	38.9073° N, 76.4600° W	228
South River	38.9073° N, 76.4600° W	to	38.4848° N, 76.4908° W	5,904
West and Rhode Rivers	38.4848° N, 76.4908° W	to	38.8531° N, 76.4959° W	4,370
Total Area				27,379

The criteria for EPA to make its determination are based on Clean Water Act 312(f), 33 U.S.C. 1322(f), and EPA's implementing regulations found at 40 CFR 140.4. A detailed EPA guidance document entitled ''Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume 1. Establishing No-Discharge Areas under section 312 of the Clean Water Act (EPA 842–B–94–004, August 1994)'' provides additional detail and informs EPA's analysis. The two primary criteria upon which an affirmative decision is based are: (1) A certifying statement of need by the state that the waters described in the application require greater environmental protection; and (2) demonstration by the state that there are adequate vessel sewage pumpout facilities available to the boating public, in lieu of direct discharge of treated sewage into the waters described in the application.

In the application, Maryland certified that the waters of the City of Annapolis and Anne Arundel County require greater environmental protection than provided by currently applicable Federal regulations. All Anne Arundel County tributaries drain into the Chesapeake Bay. The Magothy River, White Hall Bay/Meredith River, Severn River, South River, Rhode River and West River have been listed on current or previous Clean Water Act 303(d) lists of impaired waters by Maryland as impaired for shellfish harvesting due to fecal coliform. As such, many shellfish beds are restricted or closed. All except White Hall Bay/Meredith Creek are also impaired for nutrients (nitrogen and phosphorus) and all except the White Hall Bay/Meredith Creek and West River for total suspended solids (TSS). While marine sanitation devices lower fecal coliform levels, they do not effectively eliminate nutrients or solids. A no-discharge zone is expected to help reduce levels of nutrients, total suspended solids, and fecal coliform within these impaired waters.

Anne Arundel County, Maryland, supports a long history of boating, highlighted by the establishment in 1845 of the U.S. Naval Academy in the

county seat and state capital, Annapolis, along with active centers of boat-building, fishing, crabbing, and oystering from the earliest settlements into the 1980s. In recent decades, commercial vessels have largely given way to so much recreational boating that Annapolis is well known as ''The Nation's Sailing Capital.'' The U.S. Sailboat and Powerboat Shows, held annually in Annapolis each October since 1970, are the largest in-the-water boat shows in the United States. The 2017 Portbook lists 96 recreational boating businesses in Anne Arundel County; and identifies several more that support and depend on recreational crabbing and fishing.

Maryland provided documentation indicating that the maximum total vessel population is estimated to be 29,789 vessels, the majority of which are recreational. The most conservative vessel population estimates provided by Maryland suggest that there are 7,182 vessels less than 16 feet in length, 10,307 vessels between 16 feet and 26 feet in length, 9,072 vessels between 26 feet and 40 feet in length, and 3,228 vessels greater than 40 feet in length. Commercial traffic on these waterways is limited to boat rental companies, public charter boats and several small cruise ships. Based on the number and size of vessels and EPA guidance, the estimated number of vessels requiring pumpout facilities in the City of Annapolis and Anne Arundel County during peak occupancy is 2,924 vessels.

Based on the boater population in the City of Annapolis and Anne Arundel County, EPA guidance recommends that 46 pumpout facilities are needed to adequately service the vessel population. Maryland certified that there are 63 marinas offering public pumpout service, including 60 stationary units, nine portable units and three mobile pumpout boats. A list of the facilities, phone numbers, locations and hours of operation follows.

Station	Location	Phone	Hours	Depth	Off season operation	Limited overhead	Address
AREA: PATAPSCO RIVER (11):							
Atlantic Marina Resort.	Patapsco River (mouth).	410–437–6926	9–5 Daily	4′	No	NA	2010 Knollview Ave, Pasadena, MD 21122.
Blake's Bar Harbor.	Patapsco River Rock Creek.	410–255–5500	8–6 Daily	4′	No	NA	208 Bar Harbor Rd, Pasadena, MD 21122.
Fairview Marina	Patapsco River Rock Creek.	410–437–3400	Mon–Fri 8–4; Sat-Sun 8–3.	5′	No	NA	1575 Fairview Beach Rd, Pasadena, MD 21122.
Hammock Island Marina.	Patapsco River Bodkin Creek.	410–437–1870	10–4 daily	7′	No	NA	8083 Ventnor Rd, Pasadena, MD 21122.
Maryland Yacht Club.	Patapsco River Rock Creek.	410–255–4444	8–4 daily	17′	Yes	NA	1500 Fairview Beach Rd, Pasadena, MD 21122.
Nabbs Creek Marina.	Patapsco River Stoney Creek.	410–437–0402	8:30–5 daily	6′	No	Yes	864 Nabbs Creek Rd, Glen Burnie, MD 21060.
Oak Harbor Marina.	Patapsco River Rock Creek.	410–255–4070	24–7	15′	No	NA	1343 Old Water Oak Point Rd, Pasadena, MD 21122.
Pasadena Yacht Yard.	Patapsco River Rock Creek.	410–255–1771	9–5 daily	4′	No	NA	8631 Fort Smallwood Road Pasadena, MD 21122.
Pleasure Cove Marina.	Patapsco River Bodkin Creek.	410–437–6600	Mon–Thur 9–6; Fri–Sun 9–8.	8′	Yes	NA	1701 Poplar Ridge Rd, Pasadena, MD 21122.
Ventnor Marina	Patapsco River Bodkin Creek.	410–255–4100	9–5 daily	10′	Yes	NA	8070 Ventnor Rd, Pasadena, MD 21122.
White Rocks Marina & Boatyard.	Patapsco River Rock Creek.	410–255–3800	Mon–Fri 9–3; Sat 11–2.	14′	No	NA	1402 Colony Rd, Pasadena, MD 21122.
AREA: MAGOTHY RIVER (7):							
Atlantic Marina on the Magothy.	Magothy River/ Grays Creek.	410–360–2500	9–5 daily	6′	No	NA	487 New York Ave, Pasadena, MD 21122.
Fairwinds Marina.	Magothy Marina	410–974–0758	8–5 daily	6′	No	NA	1000 Fairwinds Dr, Annapolis, MD 21409.
Ferry Point Marina.	Magothy River/Mill Creek.	410–544–6368	7am–8pm daily	14′	Yes	NA	1606 Marina Dr, Trappe, MD 21673.
Hamilton Harbour Marina.	Magothy River	410–647–0733	Thurs–Tues 9–5	12′	No	NA	368 North Dr, Severna Park, MD 21146.
Hinckley Yachts	Whitehall Creek	443–951–4380	M–F 8–9; S/S by appt..	11′	Yes	NA	1656 Homewood Landing Road, Annapolis, MD 21409.
Magothy Marina	Magothy River	410–647–2356	Mon–Thur 8–6, Fri–Sun 8–8.	16′	No	NA	360 Magothy Rd, Severna Park, MD 21146.

Station	Location	Phone	Hours	Depth	Off season operation	Limited overhead	Address
Podickory Point Yacht Club.	Chesapeake Bay ...	410–757–8000	9–5 daily	5′	No	NA	2116 Bay Front Terrace, Annapolis, MD 21409.
Sandy Point State Park.	Chesapeake Bay ...	410–974–2149	24–7	6′	No	NA	1100 E College Pkwy, Annapolis, MD 21409.
AREA: SEVERN RIVER (17):							
Annapolis City Marina.	Severn River Spa Creek.	410–268–0660	8–8 daily	14′	Upon Request	NA	410 Severn Ave, Annapolis, MD 21403.
Annapolis Landing Marina.	Severn River Back Creek.	410–263–0090	10–5 daily	6′	No	NA	980 Awald Rd, Annapolis, MD 21403.
Annapolis Maryland Capital Yacht Club.	Severn River Back Creek.	410–269–5219	9–5 daily	8′	No	NA	16 Chesapeake Landing, Annapolis, MD 21403.
Bert Jabin's Yacht Yard.	Severn River Back Creek.	410–268–9667	8–4:30 daily	8′	No	NA	7310 Edgewood Rd, Annapolis, MD 21403.
Chesapeake Harbour Marina.	Chesapeake Bay ...	410–268–1969	9–5 daily	8′	No	NA	2030 Chesapeake Harbour Dr E, Annapolis, MD 21403.
City of Annapolis Pumpout Boat.	Severn River Spa Creek.	410–320–6852	Mon–Sat 8–4:30	na	na	NA	na.
Eastport Yacht Center.	Severn River Back Creek.	410–280–9988	8–4 daily	8′	No	NA	726 2nd St, Annapolis, MD 21403.
Horn Point Harbour Marina.	Severn River Back Creek.	410–263–0550	9–5 daily	8′	No	NA	105 Eastern Ave, Annapolis, MD 21403.
JPort Marina	Severn River Back Creek.	410–280–8692	9–5 daily	9′	No	NA	7074 Bembe Beach Rd, Annapolis, MD 21403.
Little John Marina.	Severn River Brewer Creek.	410–841–6491	9–5 daily	15′	No	NA	134 Sherwood Forest Road, Sherwood Forest, MD 21405.
Mears Marina ...	Severn River Back Creek.	410–268–8282	24–7	10′	No	NA	519 Chester Ave, Annapolis, MD 21403.
Pines on the Severn.	Severn River/Chase Creek.	410–370–2948	24–7	10′	No	NA	21012, Arnold, MD 21012.
Port Annapolis Marina.	Severn River Back Creek.	410–269–1990	8–4:30 daily	10′	Yes	NA	7074 Bembe Beach Rd, Annapolis, MD 21403.
Smith's Marina	Severn River Little Round Bay.	410–923–3444	8–8 daily	7′	No	Yes	529 Ridgley Rd, Crownsville, MD 21032.
The President Point.	Severn River Spa Creek.	410–991–9381	7–7 daily	5′	No	NA	
Watergate Pointe Marina.	Severn River/Back Creek.	443–926–1303	24–7	7′	No	NA	655 Americana Dr, Annapolis, MD 21403.
Yacht Haven of Annapolis.	Severn River Spa Creek.	410–267–7654	Mon–Fri 7:30–4:30	11′	No	NA	326 First St, Annapolis, MD 21403.
AREA: SOUTH RIVER (13):							
Anchor Yacht Basin.	South River Selby Bay.	410–798–1431	8–5 daily	5′	No	NA	1048 Turkey Point Rd, Edgewater, MD 21037.
Arundel on the Bay.	South River/Fishing Creek.	443–253–0596	dawn to dusk	4–6′	Yes	NA	P.O. Box 4665, Annapolis.
Fishing Creek ...	South River Duvall Creek.	.....	24–7	7′	No	NA	122 Cherry Lane, Annapolis 21403.
Holiday Point Marina.	South River Selby Bay.	410–956–2208	Mon–Fri 7:30–4; Sat by appointment.	6′	Yes	NA	3774 Beach Dr Blvd # C, Edgewater, MD 21037.
Liberty Marina ..	South River	410–266–5633	8–4:30 daily	15′	Yes	Yes	64 Old South River Rd, Edgewater, MD 21037.
Mayo Ridge Marina.	South River Ramsey Lake.	410–798–1952	9–7 daily	5′	Yes	NA	1293 Mayo Ridge Rd, Edgewater, MD 21037.
Norris Marina	South River Ramsey Lake.	410–798–0275	8–4 daily	8′	No	Yes	1111 Turkey Point Rd, Edgewater, MD 21037.
Oak Grove Marine Center.	South River	410–266–6696	Mon–Fri 10–6; Sat–Sun 8–7.	9′	No	NA	2820 Solomons Island Rd, Edgewater, MD 21037.

Station	Location	Phone	Hours	Depth	Off season operation	Limited overhead	Address
Oyster Harbor ...	South River/Oyster Creek.	410–280–8999	24–7	6′	No	NA	P.O. Box 3174, Annapolis.
Pier 7 Marina	South River	410–956–2288	9–5 daily	12′	No	Yes	48 S River Road South, Edgewater, MD 21037.
Pocahontas Marina.	South River/Pocahontas Creek.	410–533–8752	24–7	10′	Yes	NA	3365 Pocahontas Drive Edgewater, MD 21037.
Selby Bay Marina.	South River Selby Bay.	410–798–0232	9–5 daily	8′	Yes	NA	931 Selby Blvd, Edgewater, MD 21037.
Turkey Point Marina.	South River Ramsey Lake.	410–798–1369	Tues–Sat 9–5	4′	No	No	1107 Turkey Point Rd, Edgewater, MD 21037.
AREA: RHODE RIVER (5):							
Blue Water Marina.	Rhode River, Bear Neck Creek.	410–798–6968	10–5 daily	10′	No	NA	1024 Carrs Wharf Rd, Edgewater, MD 21037.
Cadle Creek Marina.	Rhode River Cadle Creek.	410–798–1915	9–5 daily	6′	No	NA	4159 Cadle Creek Rd, Edgewater, MD 21037.
Casa Rio Marina.	Rhode River Cadle Creek.	410–798–4731	Mon–Fri 8–4	5′	Yes	NA	4079 Cadle Creek Rd, Mayo, MD 21106.
Rhode River Marina.	Rhode River Back Neck Creek.	410–798–1658	8–5 daily	9′	No	NA	3932 Germantown Rd, Edgewater, MD 21037.
West/Rhode Riverkeeper Pumpout Boat.	Rhode River	443–221–5104 or VHF channel 71	Fri–Mon 8–6	.....	No	NA	4800 Atwell Road, Edgewater, MD 21037.
AREA: WEST RIVER (7):							
Backyard Boats	West River/Parrish Creek.	301–261–5115	8–4 daily	10′	Yes	NA	4819 Woods Wharf Rd Shady Side, MD 20764.
Chesapeake Yacht Club.	West River	410–867–1500	Wed–Mon 9–4	8′	No	NA	4943 Hine Dr, Shady Side, MD 20764.
Hartge Yacht Harbor.	West River	443–607–6306	Mon–Fri 8–5; Sat & Sun 9–5.	10′	No	NA	4883 Church Ln, Galesville, MD 20765.
Shady Oaks Marina.	West River	410–267–1808	8–8 daily	5′	No	NA	846 Shady Oaks Rd, West River, MD 20778.
West/Rhode River Keeper Pump out.	West River	443–221–5104 or VHF channel 71	Fri–Mon 8–6	.....	No	NA	4800 Atwell Road, Edgewater, MD 21037.
West River Fuel Dock.	West River	410–867–1444	M–Th 9–5 S/S 8–6 Fri 9–6.	8′	No	NA	4801 Riverside Dr. Galesville, MD 20765.
West River Yacht Harbor Condo.	West River	301–672–3473	8–6 daily	7′	Yes	NA	4801 Riverside Dr, Galesville, MD 20765.
AREA: WHITEHALL BAY (1):							
John L. Dunning Memorial Pier.	Mill Creek/Mill Creek Cove.	410–293–9202	9–5 Mon–Sun	12′	Yes	NA	140 Hooper High Rd. Annapolis, MD 21403.

The use of these facilities imposes minimal cost. As shown in the table below, pumpout facilities located within the proposed no-discharge zone charge fees that range from $3.00 to $50.00, with 55 of 63 available facilities charging $5.00 or less, including 15 facilities that are free to use. According to Maryland's application, the majority of commercial vessels operating in the proposed no-discharge zone are already equipped with holding tank capacity and therefore are not expected to experience incremental cost increases associated with a designation.

Fee	Number of pumpout facilities	Proportion of pumpout facilities (%)
Free	15	24
$3	1	1.5
$5	39	62
$10	5	8
$15	2	3

Fee	Number of pumpout facilities	Proportion of pumpout facilities (%)
$50	1	1.5
Total	63	100

Based on the information above, EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all thirteen waters located in the City of Annapolis and Anne Arundel County.

Dated: September 17, 2020.

Cosmo Servidio,

Regional Administrator, EPA Region III.

[FR Doc. 2020–20957 Filed 9–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0060; FRL–10015–01]

Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a July 30, 2020 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the July 30, 2020 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one anonymous public comment on the notice, but it didn't merit its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective September 23, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0060, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by the registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1, 1A and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
241–409	241	Oasis Herbicide	2,4–D, 2-ethylhexyl ester & Imazapic.
241–425	241	Glyphosate Residual RTU	Glyphosate-isopropylammonium & Imazapic-ammonium.
241–442	241	Imazapic E 2l Herbicide	Imazapic-ammonium.
241–444	241	ETI 115 01 H	Imazapic-ammonium.
264–1069	264	Trilex Advanced 300	Metalaxyl; Triadimenol & Trifloxystrobin.
352–600	352	DPX–MX670 MT	Atrazine & Dimethenamid.
352–693	352	Dupont Diuron MUP	Diuron.
352–703	352	Dupont Diuron Technical	Diuron.
352–849	352	Dupont Diuron 80 Dry Herbicide	Diuron.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
464–8132	464	Aqucar PS 75W MUP Water Treatment Microbiocide (Alternate Name).	Tetrakis (hydroxymethyl) phosphonium sulphate (THPS).
881–10	881	Richo Bock Sanitizing Rinse	Oxirane, methyl-, polymer with oxirane, monobutyl ether, compd. with iodine.
1258–1324	1258	Vantocil NR	Poly (iminoimidocarbonyliminoimidocarbonylimino hexamethylene) hydrochloride.
5481–600	5481	Tri-Scept Herbicide	Trifluralin & 3-Quinolinecarboxylic acid, 2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-, monoammonium salt.
8378–17	8378	25–5–10 Turf Food with Crabgrass Control	Trifluralin & Benfluralin.
8378–18	8378	Shaw's Premium Turf Food with Crabgrass Control	Trifluralin & Benfluralin.
8378–19	8378	Premium Lawn Food with Crabgrass Control	Trifluralin & Benfluralin.
8378–20	8378	Shaw's 18–5–9 Turf Food with XL Crabgrass Control	Trifluralin & Benfluralin.
8378–37	8378	Shaw's Turf Food & Crabgrass Control W/Team 142	Trifluralin & Benfluralin.
8660–165	8660	Sta-Green Flower & Garden Weed Preventer	Trifluralin.
8660–166	8660	Flower & Garden Weed Preventer Plus Fertilizer	Trifluralin.
9688–133	9688	Chemsico Green 'N Weed 15–15–15	Trifluralin.
10088–56	10088	Malathion 57%	Malathion (NO INERT USE).
34704–970	34704	LPI ET 75	Imidacloprid.
34704–1009	34704	Malice 75 WSP	Imidacloprid.
39967–69	39967	Preventol A20	Triadimefon & Tebuconazole.
39967–70	39967	Preventol A20 Preservative	Triadimefon & Tebuconazole.
45385–66	45385	Chem-Tox Mal 50–OS	Malathion (NO INERT USE).
47000–77	47000	CPI Disinfectant Cleaner 30–3	1-Decanaminium, N-decyl-N,N-dimethyl-, chloride.
49585–25	49585	Garden Weeder	Trifluralin.
62719–614	62719	Firststep Herbicide Tank Mix	Glycine, N-(phosphonomethyl)-, compd. with N-methylmethanamine (1:1) & Florasulam.
65656–7	65656	Dicamba Acid Technical	Dicamba.
66330–274	66330	Bacillus Cereus BP01 Technical	Bacillus cereus strain BP01.
66330–282	66330	BP01 1.7	Bacillus cereus strain BP01.
66330–291	66330	PGR–IV/BP Foliar	Gibberellic acid & Bacillus cereus strain BP01.
66330–351	66330	Pix Plus Plant Regulator	Mepiquat chloride & Bacillus cereus strain BP01.
67071–74	67071	Acticide SR 8213 C	Zinc pyrithione; 1,2-Benzisothiazolin-3-one & 2-Methyl-3(2H)-isothiazolone.
67071–97	67071	Acticide LPN 11 (Alternate)	Zinc pyrithione; 1,2-Benzisothiazolin-3-one & 2-Methyl-3(2H)-isothiazolone.
ID–110006	7969	Liberty 280 SL Herbicide	Glufosinate.
MI–080003	62719	Starane Ultra	Fluroxypyr-meptyl.
WA–150001	61842	Lime-Sulfur Solution	Lime sulfur.

TABLE 1A—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product Name	Active ingredients
56228–32	56228	M–44 Cyanide Capsules Arctic Fox	Sodium cyanide.

The registrant of the product listed in Table 1A, of Unit II, has requested the effective date of December 31, 2019, for the cancellation.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
34704–858	34704	Sniper	Bifenthrin	Alfalfa Grown for Seed.
71711–4	71711	Akari 5SC Miticide/Insecticide	Fenpyroximate	Cranberry and Highbush Cranberry.
71711–18	71711	Fenpyroximate Technical	Fenpyroximate	Cranberry and Highbush Cranberry.
71711–19	71711	Fujimite 5EC Miticide/Insecticide	Fenpyroximate	Cranberry and Highbush Cranberry.
71711–40	71711	NAI–2399–2 5EC Miticide/Insecticide.	Fenpyroximate	Cranberry and Highbush Cranberry.
71711–54	71711	Fenpyroximate 5SC MUP	Fenpyroximate	Cranberry and Highbush Cranberry.
71711–60	71711	Fenpyroximate 5EC MUP	Fenpyroximate	Cranberry and Highbush Cranberry.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1, 1A and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1, Table 1A and Table 2 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
241	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
264	Bayer CropScience, LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167.
352	E. I. Du Pont De Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
464	Nutrition & Biosciences USA 1, LLC., 1652 Larkin Center Drive, 100 Larkin Center, Midland, MI 48642.
881	Richardson Chemical Products Co., P.O. Box 240014, Milwaukee, WI 53224.
1258	Arch Chemicals, Inc., 1200 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8378	Knox Fertilizer Company, Inc., Agent Name: Fred Betz Regulatory Strategies, 922 Melvin Road, Annapolis, MD 21403.
8660	United Industries Corp., D/B/A Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St Louis, MO 63114–0642.
10088	Athea Laboratories, Inc., P.O. Box 240014, Milwaukee, WI 53224.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
39967	Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112.
45385	CTX-Cenol, Inc., 1393 East Highland Rd., Twinsburg, OH 44087.
47000	Chem-Tech, Ltd., 620 Lesher Place, Lansing, MI 48912.
49585	Alljack, Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
56228	U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 149, Riverdale, MD 20737.
61842	Tessenderlo Kerley, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct., NW, Gig Harbor, WA 98332.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
65656	Gilmore Marketing and Development, Agent Name: Biologic Regulatory Consulting, Inc., 10529 Heritage Bay Blvd., Naples, FL 34120.
66330	Arysta Lifescience North America, LLC, Agent Name: UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
67071	Thor GMBH, Agent Name: Thor Specialties, Inc., 50 Waterview Drive, Shelton, CT 06484.
71711	Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one anonymous public comment in response to the July 30, 2020 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of the products listed in Tables 1, 1A and 2 of Unit II. For this reason, the Agency does not believe that the comment submitted during the comment period merits further review or a denial of the requests for voluntary cancellation or use termination.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses identified in Tables 1, 1A and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is September 23, 2020. The effective date of the cancellation in Table 1A is December 31, 2019. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 1A and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of July 30, 2020 (85 FR 45877) (FRL–10012–40). The comment period closed on August 31, 2020.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows:

A. For Product 56228–32

For the 56228–32 listed in Table 1A of Unit II, the registrant has requested the effective date of the cancellation to be December 31, 2019; therefore, the registrant will be permitted to sell and distribute existing stocks of this product until December 31, 2020. Thereafter, the registrant will be prohibited from selling or distributing the product in Table 1A of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For All Other Voluntary Cancellations, Identified in Table 1 of Unit II

For all other voluntary cancellations, identified in Table 1 of Unit II, the registrants may continue to sell and distribute existing stocks of the products listed in Table 1 until September 23, 2021, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute the products listed in Table 2 of Unit II under the previously approved labeling until March 23, 2022, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants

will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of the canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 17, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–21004 Filed 9–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10013–48–Region 3]

Clean Water Act: Virginia—Sarah Creek and Perrin River Vessel Sewage No-Discharge Zone—Final Affirmative Determination

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice—final determination.

SUMMARY: On behalf of the Commonwealth of Virginia (the Commonwealth), the Secretary of the Virginia Department of Natural Resources requested that the Regional Administrator, U.S. Environmental Protection Agency, Region 3 approve a no-discharge zone for Sarah Creek and Perrin River, Gloucester County, Virginia pursuant to the Clean Water Act. After review of Virginia's application, the EPA determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the entirety of Sarah Creek and Perrin River. The application is available upon request from the EPA (at the email address below) or at *https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/NoDischargeZoneDesignations.aspx.*

DATES: This approval is effective upon the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Matthew A. Konfirst, U.S. Environmental Protection Agency—Region III. Telephone: (215) 814–5801, Fax number: (215) 814–5007; email address: *konfirst.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: As described in the Commonwealth's application, the extent of the proposed no-discharge zone of Sarah Creek from York River begins at 37°14′58.34″ N, 76°29′39.17″ W and extends to 37°15′00.81″ N, 76°28′37.84″ W. From there it continues north throughout any navigable waters including all tributaries and bays. The delineation of the proposed no-discharge zone of Perrin River from York River begins at 37°15′47.18″ N, 76°25′20.73″ W and extends to 37°15′50.63″ N, 76°25′11.84″ W. From there it continues north throughout any navigable waters including all tributaries and bays.

The Commonwealth certified that there are three stationary and one mobile pumpout facilities at two locations along Sarah Creek and one stationary pumpout facility along the Perrin River. Two of the three locations also have a method to empty portable toilets. Furthermore, the Hampton Roads Sanitation District (HRSD) provides free portable pumpout service in Gloucester County on Fridays, Saturdays, and Sundays during summer months and on Saturdays the rest of the year. HRSD prefers to service marinas but will provide the portable pumpout at a private residence when requested. The Virginia Department of Health (VDH) ensures that proper sanitary facilities are present at marinas, and marina facilities are inspected annually by VDH for compliance with regulations. A list of the facilities, phone numbers, locations, and hours of operation follows.

LIST OF FACILITIES WITH PUMPOUTS IN THE PROPOSED NO-DISCHARGE ZONE

Pumpout facility	Operating hours	Mean low water depth (ft)	Phone No.	Address
York River Yacht Haven (Sarah Creek).	24/7	8	804–642–2156	8109 Yacht Haven Road Gloucester Point, VA 23062.
Dockside Condominiums (Sarah Creek).	24/7 April 1–November 15	6	757–876–1568	Sunset Drive Gloucester Point, VA 23062.
Crown Pointe Marina (Perrin River)	The pumpout is available 24/7 from March 1–November 30 (so it is available even if the other marina services are closed). Dec 1–Feb 28 pumpout is winterized.	5	804–642–6177	9737 Cooks Landing Road Hayes, VA 23072.

The Commonwealth provided documentation indicating that the total vessel population is estimated to be 3,563 vessels (2,115 in Sarah Creek and 1,448 in Perrin River), the majority of which are recreational. The most conservative vessel population estimates provided by the Commonwealth of Virginia suggest that there are 535 vessels less than 16 feet in length, 1,531 vessels between 16 feet and 25 feet in length, 1,263 vessels between 25 feet and 40 feet in length, and 234 vessels greater than 40 feet in length. Commercial traffic on these waterways is limited to 24–30 dead rise workboats, two large fiberglass fishing boats, three charter fishing boats, and a few small tugs that work at the oil refinery on the other side of the York River. Most commercial boats, such as local watermen's boats, generally do not have marine sanitation devices (MSDs) installed and do not require a pumpout. As described in the Commonwealth's application, two large fiberglass fishing boats in the Perrin River have MSDs. Additionally, a few small tugboats use the Perrin River as a staging area. These vessels likely have MSDs onboard, but also use porta-johns located on the barges. Of the three charter fishing boats that are kept in Sarah Creek and operate primarily on the York River and Chesapeake Bay, two have porta-potties, while the third has an existing holding tank. Based on the number and size of vessels and EPA NDZ guidance (*Protecting Coastal Waters from Vessel*

and Marina Discharges: A Guide for State and Local Officials, August 1994), the estimated number of vessels requiring pumpout facilities in Sarah Creek and Perrin River during peak occupancy is 221. For these vessels, EPA guidance recommends at least one pumpout facility each for Sarah Creek and Perrin River.

In the application, the Commonwealth certified that Sarah Creek and Perrin River require greater environmental protection than provided by currently applicable federal regulations. Sarah Creek and Perrin River are tributaries of the York River, which drains into the Chesapeake Bay. All or portions of the proposed waters are listed by the Commonwealth on current or previous Clean Water Act section 303(d) lists of impaired waters as impaired for shellfish harvesting due to fecal coliform. As such, many shellfish beds are restricted or closed. Both waterbodies are also impaired for dissolved oxygen and aquatic plants (macrophytes). Establishing a no-discharge zone will contribute to: (1) Protecting the tidal ecosystem; (2) restoring the restricted and closed shellfish beds in these areas; and (3) preventing further water quality degradation and loss of beneficial uses in these tributaries as well as in the York River.

Sarah Creek and Perrin River are used for a variety of activities, including boating, fishing, shellfish harvesting, oyster gardening, crabbing, water skiing, swimming, and more. There are marinas, private piers, numerous vessel anchorages, public and private boat launch facilities, commercial seafood docks, and a waterside restaurant. Local watermen are interwoven with the unique identity of the Chesapeake Bay, influencing its history, culture, and economy. Furthermore, these waterbodies provide food, spawning grounds, and/or habitat to approximately 33 threatened, endangered, and rare species of plants and animals, including the Atlantic sturgeon, loggerhead sea turtle, and the northern diamond-backed terrapin.

The EPA made a final determination that adequate pumpout facilities are reasonably available in both Sarah Creek and Perrin River and that the use of these facilities imposes minimal costs. In Sarah Creek, there is no charge to use the available pumpout facilities, while in Perrin River there is a $5.00 fee per pumpout for non-slip holders, though the fee is waived with a small purchase at the marina store. Depth at low tide at the pumpout facilities is between five and eight feet, which is comparable to the depths at the entrances to Sarah Creek and Perrin River. Therefore, vessels requiring greater depths than provided at the pumpout station would have difficulty entering Sarah Creek or Perrin River.

Following publication of the Tentative Affirmative Determination in the **Federal Register** on March 11, 2020, a 30-day public comment period was opened (85 FR 14195). The EPA did not receive any comments regarding the EPA's intent to issue an affirmative determination on Virginia's application to designate Sarah Creek and Perrin River as a no-discharge zone.

Based on the information above, the EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Sarah Creek and Perrin River and its tributaries such that the Commonwealth may establish a vessel sewage no-discharge zone.

Cosmo Servidio,

Regional Administrator, EPA Region III.

[FR Doc. 2020–20956 Filed 9–22–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0083;–0085;–0137;–0148; –0182;–0194]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0083;–0085;–0137;–0148;–0182–0194).

DATES: Comments must be submitted on or before November 23, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing)

OMB Number: 3064–0083.

Form Number: None.

Affected Public: State nonmember banks and state savings associations engaging in consumer leasing.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Estimated annual burden (hours)
Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).	Record-keeping.	Mandatory	52	On Occasion	0.375	1,950
Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).	Third-Party Disclosure.	Mandatory	52	On Occasion	0.375	1,950

Total Estimated Annual Burden: 3,900 hours.

General Description of Collection: Regulation M (12 CFR 1013), issued by the Bureau of Consumer Financial Protection, implements the consumer leasing provisions of the Truth in Lending Act. Regulation M requires lessors of personal property to provide consumers with meaningful disclosures about the costs and terms of the leases for personal property. Lessors are required to retain evidence of compliance with Regulation M for twenty-four months. There is no change in the methodology or substance of this information collection. The estimated annual burden is unchanged.

2. *Title:* Record Keeping, Reporting and Disclosure Requirements in Connection with the Equal Credit Opportunity Act Regulation B.

OMB Number: 3064–0085.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated average annual frequency of responses	Estimated total annual responses	Estimated time per response	Estimated annual burden (hours)
Credit Reporting History (1002.10)	Reporting	Mandatory	3,309	850	2,812,650	2 minutes	93,755
Total Reporting Burden							*93,755*
Disclosure for Optional Self-Test (1002.5)	Third-Party Disclosure.	Voluntary	972	2,500	2,430,000	1 minute	40,500
Notifications (1002.9)	Third-Party Disclosure.	Mandatory	3,309	1,715	5,674,935	2 minutes	189,165
Appraisal Report Upon Request (1002.12(a)(1)).	Third-Party Disclosure.	Mandatory	3,309	190	628,710	1 minute	10,479
Notice of Right to Appraisal (1002.14(a)(2))	Third-Party Disclosure.	Mandatory	3,309	1,650	5,459,850	1 minute	90,998
Total Third-Party Disclosure Burden							*331,142*
Record Retention (Applications, Actions, Pre-Screened Solicitations) (1002.12).	Recordkeeping.	Mandatory	3,309	360	1,191,240	1 minute	19,854
Record Retention (Self-Testing) (1002.12)	Recordkeeping.	Mandatory	972	1	972	2 hours	1,944
Record Retention (Self-Testing Self-Correction) (1002.15).	Recordkeeping.	Mandatory	243	1	243	8 hours	1,944
Total Recordkeeping Burden							*23,742*

Total Estimated Annual Burden: 448,639 hours.

General Description of Collection: Regulation B (12 CFR part 1002) issued by the Consumer Financial Protection Bureau, prohibits creditors from discriminating against applicants on any bases specified by the Equal Credit Opportunity Act; imposes, reporting, record keeping and disclosure requirements; establishes guidelines for gathering and evaluating credit information; and requires creditors to give applicants certain written notices. There is no change in the method or substance of the collection. The overall reduction in burden hours is a result of economic fluctuation. In particular, the number of respondents has decreased while the reporting frequency and the estimated time per response remain the same.

3. *Title:* Interagency Guidance on Asset Securitization Activities.

OMB Number: 3064–0137.

Form Number: None.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Documentation of Fair Value	Recordkeeping.	Mandatory	20	On Occasion	4	80
Asset Securitization Policies—New Entrant	Recordkeeping.	Mandatory	6	On Occasion	32	192
Asset Securitization Policies—Upgrades of Policies	Recordkeeping.	Mandatory	2	On Occasion	3	6
MIS Improvements—New Entrant	Recordkeeping.	Mandatory	6	On Occasion	21	126
MIS Improvements—Systems Upgrades	Recordkeeping.	Mandatory	2	On Occasion	5	10

Total Estimated Annual Burden: 414 hours.

General Description of Collection: The Interagency Guidance on Asset Securitization Activities informs bankers and examiners of safe and sound practices regarding asset Securitization. The information collections contained in the Interagency Guidance are needed by institutions to manage their asset Securitization activities in a safe and sound manner. Bank management uses this information as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities. There is no change in the method or substance of the information collection. The overall 257-hour increase in estimated annual burden (from 157 hours in 2017 to 414 hours currently) is the result of economic fluctuation. In particular, the number of respondents has increased while the reporting frequency and the estimated time per response remain the same.

4. *Title:* Interagency Statement on Sound Practices Concerning Complex Structured Finance Transactions.

OMB Number: 3064–0148.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Complex Structured Finance Transactions	Record-keeping.	Mandatory	4	On Occasion	25	100

Total Estimated Annual Burden: 100 hours.

General Description of Collection: The Interagency Statement on Sound Practices Concerning Complex Structured Finance Transactions describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal and reputation al risks. A financial institution that engages in complex structured finance transactions should maintain a set of formal, written, firm-wide policies and procedures that are designed to allow the institution to identify and assess these risks. There is no change in the methodology or substance of this information collection. The estimated annual burden is unchanged.

5. *Title:* Retail Foreign Exchange Transactions.

OMB Number: 3064–0182.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Frequency of response	Estimated total annual responses	Estimated time per response (hours)	Estimated annual burden (hours)
Reporting Requirements	Reporting	Mandatory	1	On Occasion	1	16	16
Total Reporting Burden							*16*
Third-Party Disclosure Requirements	Third-Party Disclo-sure.	Mandatory	1	On Occasion	1	166	166
Total Third-Party Disclosure Burden							*16*
Recordkeeping Requirements	Record-keeping.	Mandatory	1	On Occasion	1	1,332	1,332
Total Recordkeeping Burden							*1,332*

Total Estimated Annual Burden: 1,514 hours.

General Description of Collection: This information collection implements section 742(c)(2) of the Dodd-Frank Act (7 U.S.C. 2(c)(2)(E) and FDIC regulations governing retail foreign exchange transactions as set forth at 12 CFR part 349, subpart B. The regulation allows banking organizations under FDIC supervision to engage in off-exchange transactions in foreign currency with retail customers provided they comply with various reporting, recordkeeping and third-party disclosure requirements specified in the rule. If an institution elects to conduct such transactions, compliance with the information collection is mandatory.

Reporting Requirements—Part 349, subpart B requires that, prior to initiating a retail foreign exchange business; a banking institution must provide the FDIC with a notice certifying that the institution has written policies and procedures, and risk measurement and management systems and controls in place to ensure that retail foreign exchange transactions are conducted in a safe and sound manner. The institution must also provide information about how it intends to manage customer due diligence, new product approvals and haircuts applied to noncash margin.

Recordkeeping Requirements—Part 349 subpart B requires that institutions engaging in retail foreign exchange transactions keep full, complete and systematic records of account, financial ledger, transaction, memorandum orders and post execution allocations of bunched orders. In addition, institutions are required to maintain records regarding their ratio of profitable accounts, possible violations of law, records of noncash margin and monthly statements and confirmations issued.

Disclosure Requirements—The regulation requires that, before opening an account that will engage in retail foreign exchange transactions, a banking institution must obtain from each retail foreign exchange customer an acknowledgement of receipt and understanding of a written disclosure specified in the rule and of disclosures about the banking institution's fees and other charges and of its profitable accounts ratio. The institution must also provide monthly statements to each retail foreign exchange customer and must send confirmation statements following every transaction.

The customer dispute resolution provisions of the regulation require certain endorsements, acknowledgements and signature language as well as the timely provision of a list of persons qualified to handle a customer's request for arbitration.

There is no change in the method or substance of the collection. At present no FDIC-supervised institution is engaging in activities that would make them subject to the information collection requirements. The agency is keeping the estimated number of respondents to one (1) as a placeholder in case an institution elects to engage in covered activities in the future. There has been no change in the frequency of response or in the estimated number of hours required to respond.

6. *Title:* Covered Financial Company Asset Purchaser Eligibility Certification.

OMB Number: 3064–0194.

Form Number: 7300/10.

Affected Public: Any individual or entity that is a potential purchaser of assets from (1) the FDIC as receiver for a Covered Financial Company (CFC); or (2) a bridge financial company (BFC) which requires the approval of the FDIC, as receiver for the predecessor CFC and as the sole shareholder of the BFC (*e.g.,* the BFC's sale of a significant business line).

Burden Estimates:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (minutes)	Estimated annual burden (hours)
Covered Financial Company Asset Sales Purchaser Eligibility Certification.	Reporting	Mandatory	10	On Occasion	30	5

Total Estimated Annual Burden: 5 hours.

General Description of Collection: Assets held by the FDIC in the course of liquidating any covered financial company must not be sold to persons who contributed to the demise of a covered financial company in specified ways (*e.g.,* individuals who profited or engaged in wrongdoing at the expense of the failed institution, or seriously mismanaged the failed institution). 12 CFR part 380 requires prospective purchasers to complete and submit a Purchaser Eligibility Certification (PEC) to the FDIC. The PEC is a self certification by a prospective purchaser that it does not fall into any of the categories of individuals or entities that are prohibited by statute or regulation from purchasing the assets of covered financial companies. The PEC will be required in connection with the sale of assets by the FDIC, as receiver for a CFC, or the sale of assets by a BFC which requires the approval of the FDIC, as receiver for the predecessor CFC and as the sole shareholder of the BFC. There is no change in the methodology or substance of this information collection. The estimated annual burden is unchanged.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 17, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–21003 Filed 9–22–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201347.

Agreement Name: Sallaum/Hyundai Glovis Space Charter Agreement.

Parties: Sallaum Lines Switzerland AS and Hyundai Glovis Co., Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes Sallaum to charter space to Hyundai Glovis on an ''as needed/as available'' basis in the trade from ports in Mexico to ports on the Atlantic and Gulf Coasts of the United States.

Proposed Effective Date: 9/14/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/33505.

Dated: September 18, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–20969 Filed 9–22–20; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–7012]

Agency Information Collection Activities; Proposed Collection; Comment Request; Use of Public Human Genetic Variant Databases To Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA recognition of public human genetic variant databases to support clinical validity for genetic and genomic-based in vitro diagnostics.

DATES: Submit either electronic or written comments on the collection of information by November 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 23, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–7012 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical

utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agency Information Collection Activities; Proposed Collection; Comment Request; Use of Public Human Genetic Variant Databases To Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics

OMB Control Number 0910–0850—Extension

Section 2011 of the 21st Century Cures Act of 2016 (Pub. L. 114–255) encourages the FDA to develop new approaches for addressing regulatory science issues as part of the Precision Medicine Initiative (PMI).

In the **Federal Register** of January 17, 2018 (83 FR 2451), FDA announced the availability of a guidance for industry entitled ''Use of Public Human Genetic Variant Databases To Support Clinical Validity for Next Generation Sequencing-Based In Vitro Diagnostics.'' The guidance describes one part of FDA's PMI effort to create a flexible and adaptive regulatory approach to the oversight of next generation sequencing (NGS)-based tests. The goal of this effort is to help ensure patients receive accurate and meaningful test results, while promoting innovation in test development. The guidance describes how publicly accessible databases of human genetic variants can serve as sources of valid scientific evidence to support the clinical validity of genotype-phenotype relationships in FDA's regulatory review of both NGS-based tests and genetic and genomic tests based on other technologies. Publicly accessible genetic databases may be useful to support the clinical validity of NGS tests as well as single gene or panel tests that use other technology.

The guidance describes FDA's considerations in determining whether a genetic variant database is a source of valid scientific evidence that could support the clinical validity of an NGS-based test. The guidance further outlines the process by which administrators [1] of genetic variant databases could voluntarily apply to FDA for recognition, and how FDA would review such applications and periodically reevaluate recognized databases. The guidance also recommends that, at the time of recognition, the database administrator make information regarding policies, procedures, and conflicts of interest publicly available and accessible on the genetic variant database's website.

Respondents are administrators of genetic databases. Our estimate of five respondents per year is based on the current number of databases that may meet FDA recommendations for recognition and seek such recognition.

Based on our experience and the nature of the information, we estimate that it will take an average of 80 hours to complete and submit an application for recognition. We estimate that maintenance of recognition activities will take approximately one-fourth of that time (20 hours) annually. We estimate that it will take approximately 1 hour to post the information on the website.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Application for recognition of genetic database	5	1	5	80	400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of recognition activities	5	1	5	20	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Public disclosure of policies, procedures, and conflicts of interest	5	1	5	1	5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[1] FDA acknowledges that many databases may not use the term ''administrator'' or may have a committee of individuals that oversee the database. Therefore, for the purpose of this guidance, a genetic variant database administrator is the entity or entities that oversee database operations.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: September 16, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–20960 Filed 9–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1879]

Determination That PREXXARTAN (Valsartan) Oral Solution, 20 Milligrams/5 Milliliters and 80 Milligrams/20 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that PREXXARTAN (valsartan) oral solution, 20 milligrams (mg)/5 milliliters (mL) and 80 mg/20 mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for valsartan oral solution, 20 mg/5 mL and 80 mg/20 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Robin Fastenau, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 240–402–4510, *robin.fastenau@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, is the subject of NDA 209139, held by Carmel Biosciences, Inc., and initially approved on December 19, 2017. PREXXARTAN is indicated for hypertension in adults and children 6 years and older, to lower blood pressure; for heart failure by significantly reducing hospitalization for patients who are unable to swallow valsartan tablets; and for stable left ventricular failure or left ventricular dysfunction following myocardial infarction.

PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. Additionally, Carmel Biosciences has never marketed PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL. In previous instances (see, *e.g.,* 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Novitium Pharma LLC submitted a citizen petition dated January 30, 2020 (Docket No. FDA–2020–P–0511), under 21 CFR 10.30, requesting that the Agency determine whether PREXXARTAN (valsartan) oral solution, 20 mg/5 mL, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 80 mg/20 mL strength, that strength has also been discontinued. On our own initiative, we have also determined whether that strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PREXXARTAN (valsartan) oral solution, 20 mg/5 mL and 80 mg/20 mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: September 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–20965 Filed 9–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1482]

Cannabidiol and Other Cannabinoids: Sex and Gender Differences in Use and Responses; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''CBD and Other Cannabinoids: Sex and Gender Differences in Use and Responses.'' The purpose of the public meeting is to discuss potential sex (biological) and gender (psychosocial) differences in use and responses to cannabidiol (CBD) and other cannabinoids. Researchers, educators, clinicians, and patients may benefit from attending this multidisciplinary scientific conference on CBD and other cannabinoids. Presentations will address patient and healthcare provider perspectives on CBD and other cannabinoid use, sex differences in the effects of CBD and other cannabinoids, use of CBD and other cannabinoids in pregnancy, and government agency perspectives on CBD research and evaluation.

DATES: The public meeting will be held on November 19, 2020, from 9 a.m. to 4 p.m. Eastern Time and will take place virtually by webcast only. Registration to attend the meeting and other information can be found at *https://www.fda.gov/science-research/womens-health-research/scientific-conference-cbd-and-other-cannabinoids-sex-and-gender-differences-use-and-responses.* See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

FOR FURTHER INFORMATION CONTACT: Lisa Lineberger, Food and Drug Administration, Office of the Commissioner, Office of Women's Health, Bldg. 32, Rm. 2333, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8751, *OWHmeetings@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is responsible for protecting the public health by assuring the safety and efficacy of FDA-regulated products. Although CBD is widely available and marketed as a component of products including drugs, food, dietary supplements, cosmetics, and animal health products, FDA has only approved one CBD product—a prescription drug to treat two rare, severe forms of epilepsy. There is very limited available information about CBD, including about its effects on the body.

FDA recognizes the significant public interest in cannabis and cannabis-derived compounds, particularly CBD. However, there are many unanswered questions about the science, safety, and quality of products containing CBD. The Agency is working on answering these questions through ongoing efforts including feedback from a FDA hearing and information and data gathering through a public docket. This public meeting will provide further insight into the scientific evidence suggesting the presence or absence of sex and gender differences in use and responses to CBD and other cannabinoids. Conditions for which CBD is often marketed, such as chronic pain, anxiety, depression, and sleep disturbances, are more prevalent in women than men. Therefore, consideration of issues pertaining to the safety of CBD products may be particularly important to address in women. In addition, use of CBD and other cannabinoids during pregnancy is an important public health concern that will be highlighted at this meeting.

II. Topics for Discussion at the Public Meeting

This public meeting will include presentations and panel discussions by experts in the fields of cannabinoid research, education, and clinical care about potential biological (sex) and psychosocial (gender) differences in the use and effects of CBD and other cannabinoids. Each panel discussion will include a Q&A session to respond to questions from attendees.

We will make the agenda and materials for the public meeting available online by November 12, 2020, at *https://www.fda.gov/science-research/womens-health-research/scientific-conference-cbd-and-other-cannabinoids-sex-and-gender-differences-use-and-responses.*

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://collaboration.fda.gov/owh-cbd-meeting/event/registration.html.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Persons interested in attending this public meeting must register online by November 16, 2020, 5 p.m. Eastern Time. Registrants will receive confirmation when they have been accepted.

If you need special accommodations due to a disability, please contact Lisa Lineberger at 301–796–8751 or *OWHmeetings@fda.hhs.gov* no later than November 9, 2020.

Streaming webcast of the public meeting: The webcast for this meeting will be available to registrants. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Dated: September 15, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–21023 Filed 9–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1640]

Draft Guidance for Cannabidiol; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry, entitled ''Draft Guidance for Cannabidiol.'' The draft guidance, when finalized, will provide product-specific recommendations on, among other things, the information and data needed to demonstrate bioequivalence (BE) to support abbreviated new drug applications (ANDAs) for cannabidiol oral solution.

DATES: Submit either electronic or written comments on the draft guidance by November 23, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1640 for ''Draft Guidance for Cannabidiol.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' will be publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff office between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Mara Miller, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4709C, Silver Spring, MD 20993–0002, 301–796–0683.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and to provide a meaningful opportunity for the public to consider and comment on the guidances. This notice announces the availability of a draft guidance on a generic cannabidiol oral solution.

FDA initially approved new drug application 210365 for EPIDIOLEX (cannabidiol) in September 2018. We are now issuing draft guidance for industry on BE recommendations for generic cannabidiol oral solution (''Draft Guidance for Cannabidiol'').

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the information and data to demonstrate BE to support ANDAs for cannabidiol oral solution. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: September 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–20968 Filed 9–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The Council on Graduate Medical Education (COGME) meeting scheduled on Tuesday, December 8, 2020, and Wednesday, December 9,

2020, has changed its format and time. The meeting will now be a 2-day webinar and conference call only on Tuesday, December 8, 2020, from 10:00 a.m.–5:00 p.m. Eastern Time (ET) and Wednesday, December 9, 2020, from 10:00 a.m.–2:00 p.m. ET. The webinar link, conference dial in number, meeting materials, and updates will be available on the COGME website: *https://www.hrsa.gov/advisory-committees/graduate-medical-edu/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Shane Rogers, Designated Federal Official, Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, 15N142, Rockville, Maryland 20857; 301–443–5260; or *BHWCOGME@hrsa.gov.*

Correction: Meeting will be a 2-day webinar and conference call only rather than in-person as previously announced.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–20940 Filed 9–22–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Revised Geographic Eligibility for Federal Office of Rural Health Policy Grants

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: HRSA's Federal Office of Rural Health Policy (FORHP) has sought to identify clear, consistent, and data-driven methods of defining rural areas in the United States. FORHP uses the Office of Management and Budget (OMB)'s list of counties designated as part of a Metropolitan Statistical Area (MSA) as the basis for determining eligibility to apply for or receive services funded by its rural health grant programs. FORHP designates all counties that are not part of a MSA as ''rural'' and eligible for rural health grant funding or services. In addition, FORHP designates census tracts within MSAs as rural for grant purposes using Rural-Urban Commuting Area (RUCA) codes. FORHP is proposing modifications to how it designates areas to be eligible for its rural health grant programs so that community organizations serving rural populations within MSAs will be able to apply for resources and allow more of the rural populations within MSAs to access services provided using grant funds. This notice seeks comments on the proposed methodology for designating areas eligible for rural health grant programs.

DATES: Submit written comments no later than October 23, 2020.

ADDRESSES: Written comments should be submitted to *ruralpolicy@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Hirsch, Public Health Analyst FORHP, HRSA, 5600 Fishers Lane, Rockville, MD 20857, Phone number: (301) 443–0835 or Email: *ruralpolicy@hrsa.gov.*

SUPPLEMENTARY INFORMATION: FORHP was authorized by Congress in the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, codified at 42 U.S.C. 912, and located in HRSA. Congress charged FORHP with informing and advising the Department of Health and Human Services on matters affecting rural hospitals and health care and coordinating activities within the Department that relate to rural health care. Since the 1990s, FORHP has also issued grants for programs of innovative models of health care delivery in rural areas. Historically, applicant organizations for these grants, authorized under Section 330A of the Public Health Service Act, were required to be located in rural areas. However, when the programs were recently reauthorized under Section 4214 of the Coronavirus Aid, Relief, and Economic Security Act the requirement was amended to allow organizations to apply that are located in urban areas but serve rural areas.

Historically, there have been two principal definitions of ''rural'' that were in use by the Federal Government: the Census Bureau definition (*https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html*) and the OMB definition (*https://www.census.gov/programs-surveys/metro-micro.html*). Neither definition defined ''rural'' directly, but rather defined ''urban'' areas and then designated locations that do not meet the ''urban'' definition as ''rural.''

In the early 1990s, the Census Bureau defined ''rural'' as all areas that were not part of an urbanized area (UA) or were not part of an incorporated area of at least 2,500 persons. UAs were defined as densely settled areas with a total population of at least 50,000 people. The building block of UAs is the census block, a sub-unit of census tracts. The Census Bureau introduced the urban cluster (UC) concept for the 2000 Census. UCs are defined based on the same criteria as UAs, but represent areas containing at least 2,500 but fewer than 50,000 people. Both UAs and UCs use 500 persons per square mile as their minimum density criterion.

The other major federal definition was based on the OMB's list of counties that are designated as part of a MSA. All counties that were not designated as a part of a MSA were considered ''rural'' or, more accurately, non-metropolitan. MSAs, in 1990, had to include ''a city of 50,000 or more population,'' or ''a Census Bureau defined urbanized area of at least 50,000 population, provided that the component county/counties of the MSA have a total population of at least 100,000.'' At that time, around three quarters of all counties in the United States were non-metropolitan and not classified as parts of MSAs.

After the 2000 Census, OMB also began to classify counties using a smaller urban core. The concept of a Micropolitan statistical area closely parallels that of the MSA, but a Micropolitan statistical area is based on an urban core with a population of 10,000 through 49,999 and Micropolitan counties are still considered non-metropolitan.

As currently classified, OMB builds both MSAs and Micropolitan Statistical Areas around a central county, or counties, which contains an urban core. Surrounding counties can be designated as part of the Core Based Statistical Area (CBSA) based on the presence of core population and/or the commuting patterns of the working population. A county may be included in only one CBSA.

A county qualifies as a central county of a CBSA if it meets the following requirements:

(a) Has at least 50 percent of the population in urban areas of at least 10,000 population; or

(b) Has within the boundaries a population of at least 5,000 located in a single urban area of at least 10,000 population.

Since urban areas are not defined by administrative boundaries, such as city limits or county borders, they can extend into one or more counties as long as the population density criterion (a minimum of 500 people per square mile) is met.

A county qualifies as an outlying county of a CBSA if it meets the following commuting requirements:

(a) At least 25 percent of the workers living in the county work in the central county or counties of the CBSA; or

(b) At least 25 percent of the employment in the county is accounted

for by workers who reside in the central county or counties of the CBSA.

Outlying counties are not required to include any UA or UC population. In some cases, counties may be considered outlying because of reverse commuting into the county from other counties in the MSA.

Because Micropolitan counties are not included in MSAs, they are included in the set of non-metropolitan counties along with counties that are not part of any CBSA.

There are measurement challenges with both the Census and OMB definitions. Some policy experts note that the Census definition classifies quite a bit of suburban area as rural. The OMB definition includes rural areas in MSA counties including, for example, the Grand Canyon which is located in a MSA county. Consequently, one could argue that the Census Bureau standard includes an over count of the rural population whereas the OMB standard represents an undercount. To address these concerns and find a middle ground between the two definitions, FORHP funded the development of Rural-Urban Commuting Area Codes (RUCAs) (*https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/*) in partnership with the Economic Research Service (ERS) of the Department of Agriculture. FORHP believes RUCAs allow more accurate targeting of resources intended for the rural population. Both FORHP and the Centers for Medicare & Medicaid Services (CMS) have used RUCAs to determine programmatic eligibility for rural areas inside of MSAs, identified as rural census tracts within these MSA counties.

RUCA codes classify census tracts using measures of population density, urbanization, and daily commuting. RUCA codes are based on the same theoretical concepts used by the OMB to define county-level Metropolitan and Micropolitan areas. By using the smaller census tract unit instead of the county, RUCAs permit a finer delineation of ''rural'' and ''urban'' areas to reflect the experience of residents. Using data from the Census Bureau, every census tract in the United States is assigned a RUCA code. Currently, there are ten primary RUCA codes with 21 secondary codes (see Table 1).

TABLE 1—PRIMARY RUCA CODES, 2010

Code classification	Description
1	Metropolitan area core: Primary flow within an urbanized area (UA).
2	Metropolitan area high commuting: Primary flow 30% or more to a UA.
3	Metropolitan area low commuting: Primary flow 10% to 30% to a UA.
4	Micropolitan area core: Primary flow within an urban cluster of 10,000 to 49,999 (large UC).
5	Micropolitan high commuting: Primary flow 30% or more to a large UC.
6	Micropolitan low commuting: Primary flow 10% to 30% to a large UC.
7	Small town core: Primary flow within an urban cluster of 2,500 to 9,999 (small UC).
8	Small town high commuting: Primary flow 30% or more to a small UC.
9	Small town low commuting: Primary flow 10% to 30% to a small UC.
10	Rural areas: Primary flow to a tract outside a UA or UC.
99	Not coded: Census tract has zero population and no rural-urban identifier information.

Current FORHP Definition of Rural

In addition to all areas of non-metro counties, specific census tracts in Metropolitan counties are considered rural and eligible for grant funding or to receive services under FORHP grant funding. These include census tracts inside MSAs with RUCA codes 4–10 and 132 large area census tracts with RUCA codes 2 and 3 that FORHP has designated as rural. The 132 MSA tracts with RUCA codes 2–3 are at least 400 square miles in area with a population density of no more than 35 people per square mile.

Following the 2010 Census, the FORHP definition included approximately 57 million people, or about 18 percent of the population and 84 percent of the area of the United States. More information about the current FORHP definition of rural is located on the HRSA website (*https://www.hrsa.gov/rural-health/about-us/definition/index.html*) and information on whether counties or individual addresses qualify as rural can be identified in a search tool at the HRSA Data Warehouse (*https://data.hrsa.gov/tools/rural-health*).

Why We Propose Modifying FORHP's Rural Definition

The goal of FORHP is to increase access to care for underserved populations and build health care capacity in rural areas. To support that goal, we must ensure that there are clear, consistent, and data-driven methods of defining rural areas in the United States. Further, FORHP must ensure that the rural definition used to determine eligibility to apply for or receive services under FORHP's rural health grant programs accurately identifies rural communities. FORHP believes that the combination of non-metropolitan counties with the set of ''rural'' census tracts within MSAs has allowed FORHP to correctly classify much of the rural population in the country as eligible for rural health grants. However, since the 2010 Census we have received feedback from rural stakeholders expressing concern that some areas with rural character in MSAs are not being identified through the current methodology.

FORHP believes that the increasing concentration of job growth in MSAs and changes in how OMB designates outlying counties as part of MSAs have led to growth in the number of MSA counties that either have no population in either UCs or UAs or that have no population in a UA but do have UC population.

Both the designation of outlying counties in MSAs and the classification of RUCA codes in census tracts are dependent on commuting data and therefore the location of jobs. During the recession, employment losses in non-metropolitan counties began earlier and were deeper than losses in MSA counties. While job growth in MSAs and non-metropolitan counties were initially similar, in the long term employment in non-metropolitan areas remained below the level where it had been before the recession. According to ERS, ''Between 2010 and 2018, non-metropolitan employment grew at an average annual rate of 0.4 percent, compared to 1.5 percent per year in MSAs. By the second quarter of 2019, non-metropolitan employment remained more than 1 percent below the pre-recession level, while MSA employment exceeded the pre-recession level by more than 9 percent.'' In the years since the recession, job growth has been concentrated not just in MSAs, but in

the largest MSAs. According to a McKinsey Global Institute report from 2019, ''Just 25 cities (megacities and high-growth hubs, plus their urban peripheries) have accounted for more than two-thirds of job growth in the last decade . . . By contrast, trailing cities have had virtually no job growth for a decade—and the counties of Americana and distressed Americana have 360,000 fewer jobs in 2017 than they did in 2007.''

Starting with the 2000 Census, OMB eliminated the use of measures of settlement structure, such as population density and percent of population that is urban, as criteria for inclusion of outlying counties as part of an MSA. Instead, commuting became the sole deciding factor as long as

(a) at least 25 percent of the employed residents of the county work in the CBSA's central county or counties, or

(b) at least 25 percent of the jobs in the potential outlying county are accounted for by workers who reside in the CBSA's central county or counties.

After the 2000 Census, the number of outlying MSA counties with no urban population quadrupled from 24 in the 1993 OMB listing to 96 in the 2003 listing. After the 2010 Census, there were 97 MSA outlying counties with no urban population.

For counties with no urban population, some stakeholders have raised the concern that commuting patterns may not reflect suburbs and urban amenities spreading outward from an urban area into rural areas. Instead, a lack of job opportunities in the rural area is causing workers to commute into an urban area from a rural area. This increased commuting does not represent an increase in access to services for rural residents but can instead represent a local economic decline. As OMB states, ''For instance, programs that seek to strengthen rural economies by focusing solely on counties located outside metropolitan statistical areas could ignore a predominantly rural county that is included in a metropolitan statistical area because a high percentage of the county's residents commute to urban centers for work.''

Comparing Rural and Urban Counties

The data presented in Table 2 shows that outlying MSA counties which have no UA population are more similar to non-metropolitan counties than they are to central MSA counties. Table 2 displays characteristics of the mean population and land area for counties in the United States (excluding Alaska and Puerto Rico). The average MSA county has a large population, over 200,000 people, most of whom live in UAs (84 percent of the total) with another 4 percent in UCs. Only 12 percent of the average MSA county population is rural as defined by the Census Bureau. The average non-metropolitan county has only approximately 10 percent of the population of the average MSA county, with the majority of people (59 percent) living in Census defined rural areas.

When looking at central MSA counties compared to the outlying MSA counties, there are large differences between the two. The average central county's population is seven times larger than the average outlying county and almost half the outlying county's population is in Census defined rural areas compared to just under 10 percent of the average central county's population. Even more striking, comparing outlying MSA counties that have no UA population at all or that have no UA or UC population at all shows that these MSA counties without densely settled areas are much more similar to non-metropolitan counties than they are to central MSA counties.

In population totals, density, and the proportion of the population living outside Census defined UAs and UCs, the outlying MSA counties with no UA population most closely resemble Micropolitan counties. The outlying counties with no UA or UC population at all, which do not include any town of even 2,500 residents, resemble the non-CBSA counties.

TABLE 2—COUNTIES BY URBANIZATION AND DENSITY [1]

County classification	County pop.	Number of counties	Urban pop.	Urban (%)	UA pop.	% UA	UC pop.	% UC	Census rural pop.	% Rural	Pop. density per sq. mile	Land area in sq. miles
Metro	**224,809**	**1,166**	**197,393**	**88**	**188,132**	**84**	**9,262**	**4**	**27,416**	**12**	**276**	**813**
Metro Central	331,742	728	300,832	91	291,341	88	9,491	3	30,910	9	367	929
Metro Outlying	47,077	438	25,468	54	16,588	35	8,880	19	21,609	46	76	621
Metro Outlying w/No Urbanized Area [2]	***23,185***	***286***	***6,969***	***46***	***0***	***0***	***6,969***	***46***	***16,216***	***54***	***36***	***650***
Metro Outlying w/No Urban Population	***10,880***	***97***	***0***	***0***	***0***	***0***	***0***	***0***	***10,880***	***100***	***17***	***624***
Nonmetro	**23,341**	**1,946**	**9,468**	**40.60**	**125**	**0.50**	**9,344**	**40.00**	**13,872**	**59**	**23**	**1,034**
Micropolitan	42,004	654	21,576	51.40	350	0.80	21,226	50.50	20,428	48	39	1,074
Neither	14,255	1,292	3,486	24.50	12	0.10	3,474	24.40	10,769	75.50	14	1,013

Proposed Methodology To Determine Eligibility for Rural Health Grants

FORHP proposes to modify its existing rural definition by adding outlying MSA counties with no UA population to its list of areas eligible to apply for or receive services funded by FORHP's rural health grants. Compared to the current definition, this modification would have the following impacts. The current set of eligible non-metropolitan counties and rural census tracts within metropolitan counties would still be eligible. Additional counties would gain eligibility for rural health grants.

Using OMB's April 2018 update of MSAs and the 2010 Census data on urban population by counties, there are 287 counties (286 reflected in Table 2 plus one county equivalent in Alaska) that are outlying counties in an MSA that have no UA population. Out of those counties, 97 had no UA or UC population at all. Many of the 287 counties (201) are already partially or fully eligible for Rural Health grants because they contain eligible census tracts. However, 86 previously ineligible counties would become fully eligible. These 86 counties include 42 outlying MSA counties that have no UA or UC population at all. Lists of the counties that will be designated as rural if this proposal is adopted are available at *https://www.hrsa.gov/rural-health/about-us/definition/datafiles.html.*

It is also important to note that there is no single definitive source for assigning rurality to a particular geographic area [3] [4] Rural definitions are

[1] This table excludes counties in Alaska and Puerto Rico. Alaskan boroughs (county equivalents) are much larger than counties in other states. One Alaskan borough would qualify as Metro Outlying with No Urbanized Area.

[2] The two bolded, italicized rows represent the counties that would become eligible in their entirety for Rural Health grants after this notice. The number of counties with no UA includes the counties that have no Urban population.

[3] U.S. Census Bureau. 2019. Understanding and Using American Community Survey Data: What Users of Data for Rural Areas Need to Know. Available from: *https://www.census.gov/programs-surveys/acs/guidance/handbooks/rural.html.* Accessed December 20, 2019.

[4] U.S. Department of Agriculture, Economic Research Service. What is Rural? Available from:

highly context dependent and while definitions of rurality may take into account a range of characteristics (*e.g.,* population density, commuting distance, land use, etc.), rural definitions do not reflect any single, inherent geographic attribute.[5] FORHP's proposal to modify our eligibility criteria to apply for or receive services funded by FORHP's rural health grants reflects our efforts to be responsive to stakeholder feedback and best target our programs towards the intended communities. This does not eliminate the fact that other rural definitions may be set by statute or regulation or the fact that other programs established outside of FORHP's 330A authorization may need to use a different definition of rural to meet program goals. No single definition of rural is perfect or advisable given the geographic variation that exists nationally and the varying needs of rural programs.

Request for Public Comment

FORHP is proposing to modify the rural definition it uses to determine geographic areas eligible to apply for or receive services funded by FORHP's rural health grants and requests comments from the public on the proposed methodology described above.

This request for comments is issued solely for information and planning purposes; it does not constitute a Request for Proposal, applications, proposal abstracts, or quotations. This request does not commit the Government to contract for any supplies or services or make a grant or cooperative agreement award or take any other official action. Further, HRSA is not seeking proposals through this Request for Information and will not accept unsolicited proposals.

HRSA is not obligated to summarize or publish a response to feedback received, or to respond to questions about the policy issues raised in this request. Responders are advised that the United States Government will not pay for any information or administrative costs incurred in response to this request; all costs associated with responding to this request will be solely at the interested party's expense.

List of References

Urban Area Criteria for Census 2000. **Federal Register**, Vol. 67, No. 51. March 15, 2002 *https://www.federalregister.gov/documents/2002/03/15/02-6186/urban-area-criteria-for-census-2000.*

Rural Employment Trends in Recession and Recovery. Economic Research Report Number 172, August 2014. *https://www.ers.usda.gov/webdocs/publications/45258/48731_err172.pdf?v=0.*

Rural America at a Glance, 2019 Edition. *https://www.ers.usda.gov/webdocs/publications/95341/eib-212.pdf?v=3322.*

The future of work in America: People and places, today and tomorrow. McKinsey Global Institute. July 2019. *https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-in-america-people-and-places-today-and-tomorrow#.*

Standards for Defining Metropolitan and Micropolitan Statistical Areas. **Federal Register**/Vol. 65, No. 249/December 27, 2000. 82228–82238 *https://www.bls.gov/lau/frn249.pdf.*

2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice. **Federal Register**/Vol. 75, No. 123, June 28, 2010. 37246–37252. *https://www.govinfo.gov/content/pkg/FR-2010-06-28/pdf/2010-15605.pdf.*

Thomas J. Engels,

Administrator.

[FR Doc. 2020–20971 Filed 9–22–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–xxxx]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 23, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-New-60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.Funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal).

Type of Collection: In use without an OMB number.

OMB No.: 0990–XXXX OS/OCIO.

Abstract: The data collected through this ICR informs the Federal Government's understanding of disease patterns and furthers the development of policies for prevention and control of disease spread and impact related to the 2019 Novel Coronavirus (COVID–19). One of the most important uses of the data collected through this ICR is to determine critical allocations of limited supplies (*e.g.,* protective equipment and medication). For instance, this collection has been used to distribute Remdesivir, a vital therapeutic that HHS distributes to the American healthcare system, via distinct data calls on regular intervals. As of July 10, HHS reduced the number requests for data from hospitals to support allocations of Remdesivir. HHS has stopped sending out one-time requests for data to aid in the distribution of Remdesivir or any other treatments or supplies. This consolidated daily reporting is the only mechanism used for the distribution calculations, and daily reports are needed to ensure accurate calculations.

Type of Respondent: We acknowledge the burden placed on many hospitals, including resource constraints, and have allowed for some flexibilities, such as back-submissions or submitting every business days, with the understanding that respondents may not have sufficient staff working over the weekend. It is our belief that collection of this information daily is the most effective way to detect outbreaks and needs for Federal assistance over time, by hospital and geographical area, and to alert the appropriate officials for action. It's requested that 5,500 hospitals, submit data daily on the

https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/what-is-rural.aspx. Accessed December 20, 2019.

[5] For a deeper discussion of this topic, please see: (a) National Academies of Sciences, Engineering, and Medicine 2016. Rationalizing Rural Area Classifications for the Economic Research Service: A Workshop Summary. Washington, DC: The National Academies Press. Accessed December 20, 2019. Available from: *https://doi.org/10.17226/21843;* and (b) Ratcliffe M, Burd C, Holder K, and Fields A, ''Defining Rural at the U.S. Census Bureau,'' ACSGEO–1, U.S. Census Bureau, Washington, DC, 2016. Available from: *https://www.census.gov/content/dam/Census/library/publications/2016/acs/acsgeo-1.pdf.*

number of patients tested for COVID–19, as well as information on bed capacity and requirements for other supplies.

The HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal) includes some data that were initially submitted by hospitals to HHS through CDC's National Healthcare Safety Network (NHSN) COVID–19 Module (OMB Control No. 0920–1290, approved 03/26/2020). Over the last several months time, the guidance for which data elements should be sent to HHS and through which method was updated at the request of the White House Coronavirus Task Force and other leaders to better inform the response.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Hospitals	HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal).	5,500	365	1.5	3,011,250
Total					3,011,250

Dated: September 15, 2020.

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–20979 Filed 9–22–20; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Adult Psychopathology and Disorders of Aging Study Section.

Date: October 15–16, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Benjamin Greenberg Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Musculoskeletal Tissue Engineering Study Section.

Date: October 20–21, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, (301) 435–1787, *srikanth.ranganathan@nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group Cellular and Molecular Technologies Study Section.

Date: October 20–21, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tatiana V Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, (301) 455–2364, *tatiana.cohen@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Synthetic and Biological Chemistry B Study Section.

Date: October 20–21, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *eissenstatma@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 20–21, 2020.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, MS, BS, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182 MSC 7892, Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: International Research Ethics Education and Curriculum Development.

Date: October 20, 2020.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Exploration of Antimicrobial Therapeutics and Resistance.

Date: October 20–21, 2020.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, (301) 827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Instrumentation and Systems Development Study Section.

Date: October 20–21, 2020.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Forbes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, (301) 272–4865, *pyonkh2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20944 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–8: Research Answers to NCI Provocative Questions.

Date: October 27, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850, 240–276–5735, *singhshr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: October 29, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Strengthening Capacity for Global Research in Low- and Middle-Income Countries.

Date: October 30, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches into Clinical Assay Development (U01).

Date: November 6, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions in Cancer with an Underlying HIV Infection.

Date: November 10, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850, 240–276–5735, *mike.lindquist@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–5: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: November 12, 2020.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850, 240–276–5415, *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: November 17, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–5: Research Answers to NCI Provocative Questions.

Date: November 19, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources Training and Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20892, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–4: Research Answers to NCI Provocative Questions.

Date: December 10, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Dr., Room 7W120, Rockville, MD 20850, 240–276–6457, *mh101v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 17, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20993 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: October 22–23, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: October 22, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 22–23, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: October 22–23, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: October 22, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.

Date: October 23, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Enhancement Award: Surgical Sciences, Biomedical Imaging, and Bioengineering.

Date: October 23, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20992 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 22–23, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Suite 703H, Bethesda, MD 20892, (301) 827–1499, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20996 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

Date: October 19–20, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Membrane Biology and Protein Processing.

Date: October 20, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maqsood A. Wani, BS, MS, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Dissemination and Implementation Research in Health Study Section.

Date: October 21–23, 2020.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding Alzheimer's Disease.

Date: October 21, 2020.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–AT–21–001: Complementary and Integrative Approaches to Modulation of Glymphatic-Lymphatic Systems.

Date: October 21, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: October 21–23, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 22–23, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sussan Paydar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5222, Bethesda, MD 20817, (301) 827–4994, *sussan.paydar@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4016F, MSC 7812, Bethesda, MD 20892, (301) 435–0908, *boycevs@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20991 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Building Interdisciplinary Research Careers in Women's Health (BIRCWH) Annual Meeting, and the Specialized Centers of Research Excellence (SCORE) Annual Meeting Keynote Address

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Building Interdisciplinary Research Careers in Women's Health (BIRCWH) Annual Meeting, held virtually December 14, 2020, sponsored by the Office of Research on Women's Health (ORWH), will focus on mentoring young investigators, present their research findings, and celebrate the 20th anniversary of the program. The Specialized Centers of Research Excellence on Sex Differences (SCORE) Annual Meeting keynote address, held virtually on December 16, 2020, sponsored by ORWH, will offer the perspective of an editor of *The Lancet* on sex differences research and the health of women. Both of these programs are signature programs created by ORWH in partnership with a number of National Institutes of Health (NIH) institutes and centers.

DATES: The BIRCWH Annual Meeting will be held virtually on December 14, 2020, from 10:00 a.m. to 5:00 p.m. EST. The SCORE Annual Meeting keynote address will be held virtually on December 16, 2020, from 10:45 a.m. to 11:30 a.m. EST.

ADDRESSES: The BIRCWH Annual Meeting and the SCORE Annual Meeting keynote address are virtual events. Event information can be found on the ORWH website: *https://orwh.od.nih.gov/about/newsroom/events.*

FOR FURTHER INFORMATION CONTACT: For information concerning these meetings, see the ORWH website, *https://orwh.od.nih.gov/about/newsroom/events,* or contact Lamont Williams, Communications Director, Office of Research on Women's Health, 6707 Democracy Boulevard, Suite 400, Bethesda, MD 20817, telephone: 301–402–1770; email: *ORWHComms@od.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C. 287d, of the Public Health Service Act, as amended and in keeping with the 30th anniversary of ORWH putting science to work for the health of women across NIH, these meetings offer enlightening virtual presentations on health research, scientific advances on the influence of sex and gender in health and disease, and progress for women in biomedical careers.

Celebrating its 20th year, BIRCWH is an institutional mentored career-development grant program connecting junior faculty, known as BIRCWH Scholars, to senior faculty with shared interest in women's health and sex differences research. The BIRCWH Annual Meeting brings BIRCWH Scholars and faculty together to share research and experiences. The BIRCWH 4th Ruth L. Kirschstein Memorial Lectureship will focus on the importance of and improvements to be made in mentoring young investigators. The meeting will also include presentations on research findings by several leading BIRCWH Scholars. Patricia E. Molina, M.D., Ph.D., Richard Ashman Professor and Head, Department of Physiology, Louisiana State University School of Medicine, will deliver a special Innovation talk to celebrate the 20th anniversary of the BIRCWH program and close the session.

SCORE is the only NIH cooperative agreement program supporting disease-agnostic research on sex differences. Each SCORE program serves as a national resource for translational research, at multiple levels of analysis, to identify the role of biological sex differences in the health of women. At this year's SCORE Annual Meeting, Jocalyn Clark, Ph.D., Executive Editor, *The Lancet,* will present the keynote address: ''Sex Differences Research and the Health of Women: An Editor's Perspective.''

The BIRCWH Annual Meeting and the SCORE Annual Meeting keynote address are free and open to the public.

Date: September 17, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–21030 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be held as a virtual meeting and open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: October 14, 2020.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: Ongoing and new activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Caron A. Lyman, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda, instructions for access, and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 17, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20995 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Institutional Training Grants.

Date: October 2, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Clinical Trial Planning Grants.

Date: October 9, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, Immunology (IMM), DPPS, Center for Scientific Review, National Institute of Nursing Research, National Institutes of Health, 6701 Rockledge Drive, RM 4205 Bethesda, MD 20892, (301) 594–0343, *yanming@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Training Grant Applications.

Date: October 30, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, Immunology (IMM), DPPS, Center for Scientific Review, National Institute of Nursing Research, National Institutes of Health, 6701 Rockledge Drive, RM 4205, Bethesda, MD 20892, (301) 594–0343, *yanming@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20942 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict SEP.

Date: September 25, 2020.

Time: 9:30 a.m. to 9:50 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Video Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 402–1622, *bissonettegb@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's and Multisystem Aging.

Date: October 15, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Video Meeting).

Contact Person: Anita H. Undale, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–7428, *anita.undale@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20941 Filed 9–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0064]

Agency Information Collection Activities: Create/Update Importer Identity Form (CBP Form 5106)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 23, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0064 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Create/Update Importer Identity Form (CBP Form 5106).

OMB Number: 1651–0064.

Form number: CBP Form 5106.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The collection of the information on the ''Create/Update Importer Identity Form'', commonly referred to as the ''*CBP Form 5106*'' is the basis for establishing bond coverage, release and entry of merchandise, liquidation and the issuance of bills and refunds. Members of the trade community use the Create/Update Importer Identification Form to register an entity as an Importer of Record (IOR) on the Automated Commercial Environment. Registering as IOR with CBP is required if an entity intends to transact Customs business and be involved as an importer, consignee/ultimate consignee, any individual or organization involved as a party, such as 4811 party, or sold to party on an informal or formal entry. The number used to identify an IOR is either an Internal Revenue Service (IRS) Employer Identification Number (EIN), a Social Security Number (SSN), or a CBP-Assigned Number. By collecting, certain information from the importer enables CBP to verify the identity of the importers, meeting IOR regulatory requirements for collecting information (*19 CFR 24.25*).

Importers, each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made.

CBP Form 5106 is authorized by 19 U.S.C 1484 and 31 U.S.C. 7701, and provided for by 19 CFR 24.5. The current version of the form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_5106.pdf.*

Estimated Number of Respondents: 300,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 300,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 225,000.

Dated: September 18, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–21026 Filed 9–22–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7028–N–07; OMB Control No.: 2577–0292]

60-Day Notice of Proposed Information Collection: Emergency Waivers Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 23, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3178), Washington, DC 20410; telephone 202–708–3000, extension 3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Emergency Waivers Reporting.

OMB Approval Number: 2577–0292.

Type of Request: Extension of a currently approved collection.

Form Numbers: HUD–5883, HUD–5884, HUD–5885.

Description of the need for the information and proposed use: The purpose of this notice is to solicit public comment on the proposed Emergency Waivers Reporting.

In response to the national COVID–19 emergency, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted on March 27, 2020. The Act gives the Department the ability to waive regulatory and statutory provisions that apply to Public Housing Agencies (PHAs). Specifically, the CARES Act allows the Secretary of HUD to ''waive, or specify alternative requirements for, any provision of any statute or regulation (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). . . . upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the safe and effective administration of these funds . . . to prevent, prepare for, and respond to coronavirus.''

HUD issued a notice detailing the waivers available in response to the COVID–19 crisis, posted on April 10, 2020, as PIH Notice 2020–05. This notice states: PHAs are required to keep written documentation that record which waivers the PHA applied to their programs(s) and the effective dates.

In response to presidentially declared Major Disaster Declarations (MDDs), FR–6050–N–04 is: Relief from HUD Public Housing and Section 8 Requirements Available During CY2020 and CY2021 to Public Housing Agencies to Assist with Recovery and Relief Efforts. This notice lists the specific waivers and relief options available for use by PHAs.

No respondent is mandated to use a waiver but use of the waivers is encouraged by HUD in response to specific emergencies to reduce burdens and administrative requirements. The notice announcing the availability of waivers becomes the checklist which respondents use to note responses as to which waivers they elected to use and their start date.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost	Total annual cost
HUD–5883	3,800	1	3,800	1	3,800	36.86	$140,068
HUD–5884	300	1	300	1	300	36.86	11,058
HUD–5885	1,000	1	1,000	1	1,000	36.86	36,860
Total	5,100		5,100		5,100	36.86	187,986

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 18, 2020.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2020–20998 Filed 9–22–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7028–N–08]

60-Day Notice of Proposed Information Collection: Grant Drawdown Payment Request/Line of Credit Control System (LOCCS)/eLOCCS; OMB Control No.: 2577–0166

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 23, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–3374 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number). Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Grant Drawdown Payment Request/LOCCS/VRS Voice Activated.

OMB Approval Number: 2577–0166.

Type of Request: Extension of a currently approved collection.

Form Numbers: 50080–CFP; 50080–OFND; 50080–SC; 50080–PHTA; 50080–URP; 50080–FSS; 50080–IHBG; 50080–TIHD.

Description of the need for the information and proposed use: On April 17, 2017, the Grant Drawdown Payment Request/Voice Response System (VRS) was converted to a Business Partner Registration and Secure Systems for both the user and the user's Approving Official. The Secure Systems supports many HUD applications, one of which is Line of Credit Control System (eLOCCS) . The eLOCCS is implementing a Single Sign-On solution under Secure Systems, where Grant recipients will be recognized and authenticated based on a Secure System ID and will no longer separately Sign-in to eLOCCS. Grant recipients use LOCCS system to request funds from HUD by signing into Secure Systems, as they normally do, and select the Line of Credit Control System (eLOCCS) link. Some Grantees (*all new or reinstated users who need to access eLOCCS*) will need to complete the LOCCS HUD–27054E form, have it notarized, send the original HUD–27054E LOCCS Access Authorization Form (with the original signature and notary seal) via U.S. Mail to the Program Office for review. The LOCCS system will automatically generate an Access Authorization email letting the user know that HUD–27054E has been processed, enabling grantees to access their eLOCCS account. The information collected on the payment voucher will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds as well as provide a service to program recipients.

Below is a link where the HUD–27054E LOCCS Authorized Form can be accessed: *http://portal.hud.gov/hudportal/documents/huddoc?id=27054E.pdf.*

Respondents: PHAs, state or local government. Tribes and tribally designated housing entities.

Information collection	Number of respondents	Frequency of responses	Responses per annum	Burden hour per response	Annual burden hours	* Hourly cost per response	Annual cost
Capital Fund 50080–CFP	3,100	12	37,200	.25	9,300	24.08	233,944.00
Operating Fund 50080–OFND	3,100	12	37,200	.25	9,300	24.08	233,944.00
Resident Opportunities and Supportive Services (ROSS) SC 50080–SC	330	12	3,960	.25	990	24.08	23,839.20
Public Housing Technical Assistance 50080–PHTA	12	12	144	.25	36	24.08	866.88
Hope VI 50080–URP	50	12	600	.50	300	24.08	7,224.00
Family Self-Sufficiency 50080–FSS	700	12	8,400	.25	2,100	24.08	50,568.00
Indian Housing Block Grant 50080–IHBG	361	12	4,332	.25	1,083	24.08	26,078.64
Traditional Indian Housing Development 50080–TIHD	32	12	384	.25	96	24.08	2,190.72
Totals	7,685		92,220		23,205		$558,776.40

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: September 18, 2020.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2020–20999 Filed 9–22–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N130; FXES11130100000–201–FF01E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on this

application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before October 23, 2020.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross TE–08964A–2):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application for a permit under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would allow the applicant to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Application Available for Review and Comment

Proposed activities in the following permit request are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing this permit. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to this application. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–71614D	Hawaii Marine Mammal Alliance, Inc., Kailua, HI.	Green sea turtle (*Chelonia mydas*); Hawksbill sea turtle (*Eretmochelys imbricata*); Leatherback sea turtle (*Dermochelys coriacea*); Loggerhead sea turtle (*Caretta caretta*).	Hawaiian Archipelago, and the Pacific Islands Region.	Harass by receipt and rehabilitation of stranded sea turtles, educational and training activities, tag, transport, release, and salvage.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Sarah B. Hall,

Acting Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2020–20949 Filed 9–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0099; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species; Marine Mammals; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA) and foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the ESA and the MMPA prohibit activities

with listed species unless Federal authorization is issued that allows such activities. The ESA and MMPA also require that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA or MMPA with respect to any endangered species or marine mammals.

DATES: We must receive comments by October 23, 2020.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0099.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0099.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0099; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA and MMPA prohibit certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17. Service regulations regarding permits for any activity otherwise prohibited by the MMPA with respect to any marine mammals are available in title 50 of the Code of Federal Regulations in part 18. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Applications

We invite comments on the following applications.

A. Endangered Species

Applicant: Animal Ark Wildlife Sanctuary, Reno NV, Permit No. 69790D

The applicant requests a permit to purchase three male captive-born cheetahs (*Acinonyx jubatus*) in interstate commerce from Tanganyika Wildlife Foundation, Goddard, KS, for the purpose of enhancing the propagation or survival of the species. This notification is for a single interstate commerce activity.

Applicant: National Museum of Natural History, Smithsonian Institution, Washington, DC; Permit No. 56444D

The applicant requests a permit to import biological samples derived from wild Amsterdam albatross (*Diomedea amsterdamensis*), band-rumped storm-petrel (*Oceanodroma castro*), Fiji petrel (*Pseudobulweria macgillivrayi*), Mascarene black petrel (*Pterodroma aterrima*), cahow (*Pterodroma cahow*), and Madeira petrel (*Pterodroma madeira*), taken in multiple locations, for the purpose of scientific research. This notification is for a single import.

Applicant: Maryland Zoo in Baltimore, Baltimore, MD; Permit No. 70028D

The applicant requests a permit to import biological samples derived from one wild maned wolf (*Chrysocyon brachyurus*), taken in Noel Kempff Mercado National Park, Bolivia, for the purpose of scientific research. This notification is for a single import.

Applicant: Sam Noble Oklahoma Museum of Natural History, Norman, OK; Permit No. 075249

The applicant requests authorization to export and reimport nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Project Survival, Dunlap, CA; Permit No. 71734D

The applicant requests a permit to import one male and one female captive-born cheetah (*Acinonyx jubatus*) from Cango Wildlife Ranch, Oudtshoorn, South Africa, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Saint Louis Zoo, Saint Louis, MO; Permit No. 62698C

The applicant requests a renewal of a permit to import blood and swab samples from the Galapagos tortoise (*Geochelone nigra*), from three locations in the Galapagos Islands, Ecuador, for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Gary Bourn, Bennett, CO; Permit No. 79873D

Applicant: Debra Mathews, Frenchtown, MT; Permit No. 80624D

B. Endangered Marine Mammals and Marine Mammals

Applicant: Charlie Hamilton James, Jackson, WY; Permit No. 37946D

The applicant requests a permit to photograph and film Southern sea otters (*Enhydra lutris nereis*) along the coast of California, for the purpose of commercial educational photography. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Charlie Hamilton James, Jackson, WY; Permit No. 37058D

The applicant requests a permit to photograph and film Northern sea otters (*Enhydra lutrls kenyoni*), for up to 28 days, in Alaska, for the purpose of educational photography. This species is not listed under the ESA. This notification covers activities to be conducted by the applicant over a 1-year period.

C. Wild Bird Conservation Act

The public is invited to comment on the following application for approval to conduct certain activities with a bird species covered under the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916). This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992 (50 CFR 15.26(c)).

Applicant: Gregory P. Sercel, Pasadena, CA; Permit No. 76644D

The applicant wishes to establish a cooperative breeding program for collared lory (*Phigys solitarius*), blue-crowned lorikeet (*Vini australis*), and cardinal lorry (*Chalcopsitta cardinalis*), importing to the United States 48 birds (16 of each species) currently held in facilities in captive breeding facilities in the Czech Republic, Italy, Germany, and Spain. The applicant wishes to be an active participant in this program, along with Christine Touchton (Lecanto, Florida), Charles Hawke (Portland, Oregon), and Jordan Berber (Atwater, California). If approved, the program will be overseen by the Organization of Professional Aviculturists, San Dimas, California.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2020–20978 Filed 9–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]

Notice of Teleconference Meeting of the Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Department of the Interior, Office of the Secretary, is announcing that the *Exxon Valdez* Oil Spill (EVOS) Trustee Council's Public Advisory Committee will meet by teleconference as noted below.

DATES: The virtual meeting will be held on Tuesday, October 13, 2020, beginning at 9:00 a.m. Alaska Daylight Time (AKDT).

ADDRESSES: The meeting will be virtual only using the Zoom meeting platform. To view a tutorial on how to join a Zoom meeting please go to *https://support.zoom.us/hc/en-us/articles/201362193-How-Do-I-Join-A-Meeting-*. The video feature will be turned off for all attendees except for the EVOS Public Advisory Committee, Trustee Council staff, presenters, and speakers during public comment to limit bandwidth use and maximize connectivity during the meeting. Please remain muted until you are called upon to speak.

Connect to meeting using Zoom link (video and audio): https://zoom.us/j/91852919430?pwd=SnBUVHdybDF0RUlHYVJsdDFlTjFKQT09.

Meeting ID: 918 5291 9430.

Passcode: 994062.

Follow the prompts, you will be asked if you would like to join audio with internet (your device microphone/speaker) or use a telephone (follow the prompts accordingly). *Connect to the meeting via telephone (audio only, no video):*

Dial any of the following numbers:

(669) 900–6833
(253) 215–8782
(346) 248–7799
(929) 205–6099
(301) 715–8592
(312) 626–6799

Enter the Meeting ID 918 5291 9430#, there is no participant code, and press *6 to mute. Please check the EVOS Trustee Council website for updates regarding the virtual meeting at *www.evostc.state.ak.us/events.*

FOR FURTHER INFORMATION CONTACT: Dr. Philip Johnson, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501; telephone number: (907) 271–5011; email: *philip_johnson@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The EVOS Public Advisory Committee was created pursuant to Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State

of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The EVOS Public Advisory Committee teleconference agenda will include the FY21 Draft Work Plan and FY22–31 Draft Invitation. An opportunity for public comments will be provided. The final agenda and materials for the meeting will be posted on the EVOS Trustee Council website at *www.evostc.state.ak.us/events.* All EVOS Public Advisory Committee meetings are open to the public.

Public Input

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Committee to consider during the public meeting. Written statements must be received by October 7, 2020, so that the information may be made available to the Committee for their consideration prior to this meeting. Written statements must be supplied to Dr. Philip Johnson via email (see above) and/or in writing in the following formats: A hard copy with original signature and/or an electronic copy (acceptable file formats are Adobe Acrobat PDF, Microsoft Word, or rich text file).

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Philip Johnson,

Regional Environmental Officer, Office of Environmental Policy and Compliance.

[FR Doc. 2020–20955 Filed 9–22–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0048; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Geological and Geophysical Explorations of the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection request with revisions.

DATES: Interested persons are invited to submit comments on or before October 23, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to the Office of Management and Budget's Desk Officer for the Department of the Interior within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov*. Please reference Office of Management and Budget (OMB) Control Number 1010–0048 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703–787–1025. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Abstract: This information collection request concerns the paperwork requirements in the regulations in 30 CFR part 551, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf. This request also covers Form BOEM–0327.

Section 11(g) of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1340(g)), authorizes the Secretary of the Interior to prescribe rules and regulations to govern the issuance of permits for G&G exploration on the OCS. The OCSLA at § 11 states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area.'' The section further provides that permits to conduct such activities may be issued only if it is determined that: The applicant is qualified; the activities will not interfere with or endanger operations under any lease issued or maintained pursuant to OCSLA; and the activities will not be unduly harmful to aquatic life, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archaeological significance.

Applicants for permits are required to submit Form BOEM–0327 to provide the information necessary to evaluate their qualifications, and upon approval, respondents are issued a permit. Once an application is reviewed and approved, a permit (Form BOEM–0328 or Form BOEM–0329) is signed by BOEM and the permittee.

The Independent Offices Appropriations Act of 1950 (31 U.S.C. 9701) and the Omnibus Appropriations Bill of 1996 (Pub. L. 104–134, 110 Stat. 1321, April 26, 1996), as further explained in OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. All G&G permits are subject to cost recovery, and BOEM regulations specify service fees for these requests.

Regulations to carry out these responsibilities are contained in 30 CFR part 551 and are the subject of this information collection renewal. BOEM uses the information to:

- Authorize exploration to identify oil, gas, sulfur, and mineral resources in the OCS;
- Ensure the receipt of fair value for mineral resources;
- Ensure that the exploration activities do not cause harm to the

environment or persons, or create unsafe operations and conditions, damage historical or archaeological sites, or interfere with other uses;

• Analyze and evaluate preliminary or planned drilling activities;

• Monitor progress and activities on the OCS;

• Acquire geological and geophysical data and information collected under a Federal permit offshore at cost of reproduction; and

• Determine eligibility for reimbursement from the government for certain costs.

In this renewal, BOEM is renewing Form BOEM–0327—Requirements for Geological or Geophysical Explorations or Scientific Research on the Outer Continental Shelf. This form consists of the requirements for geological and geophysical activities requiring Permits and Notices, along with the application that the respondent submits to BOEM for approval, as well as a nonexclusive use agreement for scientific research, if applicable.

Upon BOEM approval of the application, respondents are issued a permit using Form BOEM–0328, Permit for Geophysical Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf, for conducting geophysical exploration for mineral resources or scientific research, or Form BOEM–0329, Permit for Geological Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf, for conducting geological exploration for mineral resources or scientific research. These permits are filled in by BOEM and respondents do not incur an hour burden. However, BOEM plans to revise these permits to include additional language. The modifications to the permits will allow BOEM to request the G&G data prior to the permittee deleting or removing the data from records, but still provides the option for the permittee to no longer maintain the data after ten years. The following describes the proposed changes:

• Form BOEM–0328 would include additional language in Section IV Paragraph (A) stating:

''*After a period of 10 years from the issuance of the permit, the permittee must notify the Supervisor in writing if their intention is to no longer maintain all or part of the geophysical data, processed geophysical information, and interpreted geophysical information, and provide the Supervisor 30 days to request that the permittee submit for inspection and possible retention all or part of the geophysical data, processed geophysical information, and interpreted geophysical information.*''

• Form BOEM–0329 would include additional language in Section VI Paragraph (A) stating:

''*After a period of 10 years from the issuance of the permit, the permittee must notify the Supervisor in writing if their intention is to no longer maintain all or part of the geological data, analyzed geological information, processed geological information, and interpreted geological information, and provide the Supervisor 30 days to request that the permittee submit for inspection and possible retention all or part of the geological data, analyzed geological information, processed geological information, and interpreted geological information.*''

Title of Collection: 30 CFR 551, Geological and Geophysical Explorations of the OCS.

OMB Control Number: 1010–0048.

Form Number:

• BOEM–0327, Requirements for Geological or Geophysical Explorations or Scientific Research on the Outer Continental Shelf.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur permittees or notice filers.

Total Estimated Number of Annual Responses: 688 responses.

Total Estimated Number of Annual Burden Hours: 35,254 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion, annual, or as specified in permit.

Total Estimated Annual Non-hour Burden Cost: $136,816.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved OMB paperwork burden is 35,254 annual burden hours, and will remain the same.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this proposed information collection request was published on October 25, 2019 (84 FR 57472). BOEM received three comment letters during the 60-day comment period. Comments received were from the American Petroleum Institute (API) and the International Association of Geophysical Contractors (IAGC), the Center for Regulatory Effectiveness, and a private citizen.

The API and IAGC comments from December 24, 2019 and BOEM's responses follow:

Comment: Industry finds the timeliness of the permit process for G&G activities to be open-ended and uncertain. The Associations recommend that BOEM establish a certain timeline for permit review and approval. The timing requirements for drilling permit review and approval is a good example that BOEM should strive to achieve for the G&G industry.

BOEM Response: Since 2012, BOEM has consistently issued Gulf of Mexico (GOM) Geological and Geophysical (G&G) permits within 70 days. At present, there is a great amount of uncertainty related to the issuance of G&G permits in the Atlantic. However, if decisions are made to allow for the collection of seismic data, the goal would be to issue future permits within reasonable and predictable timeframes. Permitting timeframes are outside the scope of this renewal.

Comment: We encourage BOEM to explore the creation of an electronic permit application process. Efficiencies for permit processing and man-hours may be realized through electronic permit applications. Many countries around the world utilize electronic permit application processes. This allows the applicant to monitor the status of the permit process and timely provide any information requests from BOEM. This has been seen to drastically decrease the permit process timeline.

BOEM Response: A web-based process for the electronic submission/issuance of BOEM G&G permitting is being considered for the future. Budgetary options are being explored.

Comment: G&G operations are consistently utilizing the same vessels throughout the offshore U.S. BOEM should take steps to create a catalogue of vessel information and certificates to reduce permitting costs and burden hours.

BOEM Response: BOEM currently captures some vessel information in our corporate database and is open to discussing how this information could be used to reduce permitting costs and burden hours in the future.

Comment: BOEM should develop a catalogue of equipment used in offshore G&G activities, including Ocean Bottom Nodes, Ocean Bottom Cables, Streamers, etc. This would reduce the time needed to collect pictures and physical samples of all parts and equipment deployed in the water column. Permit applications could then reference these materials to reduce time spent.

BOEM Response: BOEM currently captures some information related to the offshore equipment being used in offshore G&G activities in our corporate database. However, even when a permittee is proposing similar G&G activities that have been previously employed, there is variability in use, location, and advances to the technology that make each permit unique. BOEM must consider each case individually.

On December 19, 2019, the Center for Regulatory Effectiveness commented that BOEM should withdraw its petition to the National Marine Fisheries Service to issue a regulation governing the taking of marine mammals in the Gulf of Mexico.

BOEM Response: This comment is outside the scope of this information collection renewal. NMFS has the authority to authorize incidental take under the Marine Mammal Protection Act and the Endangered Species Act. BOEM has petitioned NMFS for the development of regulations governing incidental take of marine mammals related to conducting geophysical surveys during oil and gas exploration activities in the GOM. BOEM has identified areas where there is the potential to impact its mission under OCSLA in the GOM, and potentially other regions and programs, and its ability to manage the development of OCS energy and mineral resources in an environmentally responsible and practical way.

The NMFS proposed Incidental Take rulemaking, which is a separate process from this information collection renewal, allowed for public comments.

On October 25, 2019, a private citizen commented that far too much exploration is being allowed, explosions and high sonar work needs to be stopped, and would like BOEM to cut exploration back by seventy percent.

BOEM Response: OCSLA mandates that all G&G activities on the OCS be conducted in a safe and environmentally sound manner. BOEM uses information received to best understand and evaluate the proposed activity and equipment to be used, which helps to ensure that the appropriate site/activity environmental analysis is conducted in order to fulfill its statutory obligations.

BOEM is again soliciting comments on the proposed ICR that is described below. BOEM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure this information will be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. BOEM will include or summarize each comment in its request to the Office of Management and Budget (OMB) for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personal identifying information—may be made publicly available at any time. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in the submittal of your comments that, if released, would clearly constitute an unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of your information, such as embarrassment, injury, or other harm. While you can ask BOEM in your comment to withhold your personally identifiable information from public review, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2), and under regulations at 30 CFR parts 551 promulgated pursuant to the Outer Continental Shelf Lands Act (OCSLA) at 43 U.S.C. 1352(c).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulation, and Analysis.

[FR Doc. 2020–20948 Filed 9–22–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–723]

Importer of Controlled Substances Application: Caligor Coghlan Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Caligor Coghlan Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 23, 2020. Such persons may also file a written request for a hearing on the application on or before October 23, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 21, 2020, Caligor Coghlan Pharma Services, 1500 Business Park Drive, Unit B, Bastrop, Texas 78602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tapentadol	9780	II

The company plans to import the listed controlled substance in finished dosage form to be used in pediatric clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of a Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–21009 Filed 9–22–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Nebraska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Nebraska.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Nebraska's 13-week insured unemployment rate (IUR) for the week ending August 22, 2020, was 4.95 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Nebraska will end on September 12, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13 (c)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202)–693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–21029 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Concrete and Masonry Construction Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657). The warning signs/barriers required by paragraph 1926.701(c)(2) reduce exposure of non-essential workers to the hazards of post-tensioning operations, principally a failed rope or wire striking a worker and causing serious injury. The requirements for lockout and tag ejection systems and other hazardous equipment (*e.g.,* compressors, mixers, screens or pumps used for concrete and masonry construction) specified by paragraphs 1926.702(a)(2), (j)(1), and (j)(2) warn equipment operators not to activate their equipment if another worker enters the equipment to perform a task (*e.g.,* cleaning, inspecting, maintaining, repairing), thereby preventing injury or death. Construction contractors and workers use the drawings, plans, and designs required by paragraph 1926.703(a)(2) to provide specific instructions on how to construct, erect, brace, maintain, and remove shores and formwork if they pour concrete at the job site. Paragraph 1926.705(b) requires employers to mark the rated capacity of jacks and lifting units. This requirement prevents overloading and subsequent collapse of jacks and lifting units, as well as their loads, thereby sparing exposed workers from serious injury or death. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 20, 2020 (85 FR 30740).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Concrete and Masonry Construction Standard.

OMB Control Number: 1218–0095.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 275,619.

Total Estimated Number of Responses: 275,619.

Total Estimated Annual Time Burden: 22,968 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 17, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–20952 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Logging Operations Standards

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The collection of information contained in the Logging Operations Standard are necessary to reduce workers' risk of death or serious injury by requiring employers to assure that operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must assure that operating and maintenance instructions are available for each vehicle.

Maintenance and Operating Instructions (§§ 1910.266(f)(1)(iii) and (g)(3))

Under paragraph (f)(1)(iii) and (g)(3) of the Standard, employers must assure that operating and maintenance instructions are available on machines or in the area where the machine is being operated, and in vehicles. For those machines with no operating instructions in the cab, the employer will be required to obtain and retain a manual within the immediate work area for each machine. Because the Logging Operations final rule has been in effect since 1995, OSHA assumes that all employers are in compliance with the provision to have operating and maintenance instructions available on machines or in the area where the machines are being operated.

Certification of Training (§ 1910.266(i)(10)(i) and (i)(10)(ii))

Paragraph (i)(10)(i) requires employers to certify in writing that a worker/supervisor received the training the Standard requires. Under paragraph (i)(10)(ii), employers need only maintain the most recent certification for training that a worker/supervisor has received. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 24, 2020 (85 FR 23068).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Logging Operation Standard.

OMB Control Number: 1218–0198.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 8,076.

Total Estimated Number of Responses: 50,996.

Total Estimated Annual Time Burden: 1,507 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 17, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–20951 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Producer Price Index Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 23, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–

4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Producer Price Index (PPI), one of the Nation's leading economic indicators, designated as a Principal Federal Economic Indicator. The PPI consists of a family of indexes that measures the average change over time in the selling prices received by domestic producers of goods and services. About 10,000 PPIs for individual products and groups of products are released each month. PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, construction, and goods competitive with those made in the producing sectors, such as waste and scrap materials. The PPI data are widely used by the business community as well as by government. In particular the data are used as an economic indicator playing a crucial role in market analysis, as a deflator of other economic series, the basis for the calculation of price adjustments for contracts and purchase agreements and as an input to economic research. These uses highlight the necessity of the PPI in order to understand the economy. PPI data meets a wide range of government needs by providing a description of the magnitude and composition of price changes within the economy. Government agencies view these indexes as sensitive indicators of the economic environment and closely follow each monthly release of statistics. PPI data are vital in helping the President and Congress set fiscal spending targets. The Federal Reserve Board Open Market Committee monitors producer prices to help determine monetary policy. Federal policy makers at the Department of the Treasury and the Council of Economic Advisors utilize these statistics to help interpret the economic environment and make decisions based upon these interpretations. Many dollar denominated measurements of economic performance, such as the Gross Domestic Product (GDP), require accurate price data for the conversion of nominal dollars into real dollars. National income accounting figures must also be inflation free in order to remain relevant to fiscal and monetary policy makers setting objectives. Price adjustment clauses in government purchasing contracts commonly use one or more PPIs. According to a conservative estimate hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price adjustment clauses. Failure to calculate these price data would prolong the time frame needed for accurate recognition of and appropriate adaptation to economic events. The private sector also makes extensive use of PPI data. Researchers commonly use producer prices to probe and measure the interaction of market forces. Private firms use PPIs for contract escalation and price adjustment. The Internal Revenue Service (IRS) recommends using PPI data for certain kinds of tax related inventory accounting, such as Last-In First-Out (LIFO). Private businesses extensively use PPIs for planning and operations. Firms often compare the prices they pay and receive with changes in appropriate PPIs. Economic researchers and forecasters also put PPIs to regular use. They use PPI data to better understand market forces. Research topics requiring producer price data include studying elasticities, potential lead and lag structures within price changes, and the identification of prices that demonstrate tremendous influence throughout the economy if they change. Policy-makers, businesses, and researchers all require complete descriptions of price change trends if they are to perform effectively and efficiently. The expansive coverage of PPIs makes it very valuable to the users described above as well as many others. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 5, 2020 (85 FR 34656).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–BLS.

Title of Collection: Producer Price Index Survey.

OMB Control Number: 1220–0008.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 15,945.

Total Estimated Number of Responses: 739,645.

Total Estimated Annual Time Burden: 69,945 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 17, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–20950 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Deputy Secretary
Vice-Chair—Assistant Secretary for Administration and Management
Alternate Vice-Chair—Chief Human Capital Officer

Rotating Membership—Appointments Expire on 09/30/21

BLS Nancy Ruiz De Gamboa, Associate Commissioner for Administration
EBSA Amy Turner, Deputy Assistant Secretary
ETA Nicholas Lalpuis, Regional Administrator, Dallas

MSHA Patricia Silvey, Deputy Assistant Secretary
OASAM Geoffrey Kenyon, Deputy Assistant Secretary for Budget
OSHA Galen Blanton, Regional Administrator, Boston
OSHA Loren Sweatt, Principal Deputy Assistant Secretary
SOL Kate O'Scannlain, Solicitor of Labor
VETS Ivan Denton, Director, National Programs
WHD Patrice Torres, Associate Director, Administrative Operations

Rotating Membership—Appointment Expires on 09/30/23

ETA Debra Carr, Deputy Administrator, Office of Job Corps
OLMS Andrew Auerbach, Deputy Director
VETS John Lowry, Assistant Secretary

FOR FURTHER INFORMATION CONTACT: Mr. Demeatric Gamble, Chief, Division of Executive Resources, Room N2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210, telephone: (202) 693–7694.

Signed at Washington, DC, on the 18th day of September 2020.

Bryan Slater,

Assistant Secretary for Administration and Management.

[FR Doc. 2020–21028 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0017]

QAI Laboratories, Ltd.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for QAI Laboratories, Ltd., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 23, 2020.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of QAI Laboratories, Ltd. (QAI), as a NRTL. QAI's expansion covers the addition of one test standard to the scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

QAI submitted an application, dated November 8, 2017 (OSHA–2013–0017–0015), to expand their scope of recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application. OSHA published the preliminary notice announcing QAI's expansion application in the **Federal Register** on February 26, 2020 (85 FR 11108). The agency requested comments by March 12, 2020, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of QAI's scope of recognition.

To obtain or review copies of all public documents pertaining to QAI's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration. Docket No. OSHA–2013–0017 contains all materials in the record concerning QAI's recognition.

II. Final Decision and Order

OSHA staff examined QAI's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that QAI meets the requirements of 29 CFR 1910.7 for expansion of the scope of recognition, subject to the conditions listed below. OSHA, therefore, is proceeding with this final notice to grant the expansion of QAI's scope of recognition. OSHA limits the expansion of QAI's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
AAMI ES60601–1 ..	Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance (with amendments).

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test

standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the designation of the standards-developing organization for the standard as opposed to the ANSI designation may be used. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, QAI must abide by the following conditions of the recognition:

1. QAI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);

2. QAI must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. QAI must continue to meet the requirements for recognition, including all previously published conditions on QAI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of QAI, subject to the conditions specified above.

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 17, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–20953 Filed 9–22–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE

[Docket No.: 09–2020–01]

Solicitation of Written Comments by the National Security Commission on Artificial Intelligence

AGENCY: National Security Commission on Artificial Intelligence.

ACTION: Request for comments.

SUMMARY: The National Security Commission on Artificial Intelligence (''the Commission) is publishing this notice to request comments from small- and medium-sized AI firms to help the Commission understand different views on working with the federal government. Responses will assist in identifying critical areas for improvement and recommended changes in the government's approach to technology procurement and support for commercial innovation.

DATES: *Comment Date:* The Commission requests comments from qualified parties on or before October 23, 2020.

ADDRESSES: You may submit comments, identified by Docket No. 09–2020–01, by one of the following methods:

- *Email: inquiry@nscai.gov.* Please include the docket number in the subject line of the message.
- *Mail:* National Security Commission on Artificial Intelligence, Attn: RFI COMMENT—Docket No. 09–2020–01, 2530 Crystal Drive, Box 45, Arlington, VA 22202.
- *Fax:* +1–571–778–5049. Please include the docket number on the fax cover page.

Due to the ongoing COVID–19 coronavirus pandemic, email is the Commission's primary method of receiving public comment. All submissions received must include the docket number. If the Commission cannot read your comment due to technical difficulties and cannot contact you for clarification, the Commission may not be able to consider your comment. Late comments will be considered as time permits. Please note, any comments received by the Commission may be treated as public documents, be published on the Commission's website, or be included with its reports and/or recommendations. Based on the inputs from responders, the Commission may select particular responders for follow up conversations with the Commission's special project on public private partnerships. Submitters should be aware that the Commission is subject to the Freedom of Information Act and will transfer official records, including comments received, to the National Archives and Records Administration upon termination of the Commission.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information about this request for comments, please contact Tara Rigler by email at *inquiry@nscai.gov.*

SUPPLEMENTARY INFORMATION:

Background

In the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Sec. 1051, Public Law 115–232, 132 Stat. 1636, 1962–65 (2018), Congress directed the Commission to consider public-private partnerships relative to the competitiveness of the United States in AI, machine learning, and other associated technologies. In accordance with this direction, the Commission established a special project on public-private partnerships. The Commission has engaged stakeholders from across industry, academia, government, and civil society with the following objectives: (1) Assess the relationship between the National Security Innovation Base (NSIB) and the United States Government; and (2) Identify options for improving cooperation between the NSIB and the United States Government to increase the well-being of our citizens, strengthen the nation's entrepreneurial ecosystems, and protect the nation's security.

This research has informed the Commission's approach from the outset and is reflected in one of the seven consensus principles outlined in the Interim Report, which states: ''Private sector leaders and government officials must build a shared sense of responsibility for the welfare and security of the American people.'' In addition, these engagements have also influenced recommendations in the Commission's First and Second Quarter memorandums. The Commission's Interim Report, as well as the First and Second Quarter recommendations, can be found on the Commission's website at *https://www.nscai.gov/reports.* Moving towards its final report, due in March 2021, the Commission now seeks input from small- and medium-sized AI firms on methods and means by which the Government should engage with the private sector and bolster commercial AI innovation.

Instructions

Respondents may choose to comment on one or all of the topic areas listed below. Please note that only comments received from firms that meet the small

business size standard for NAICS codes 541715 and 611420 will be considered under this request for comments. Firms that do not fit the NAICS code or size standard but wish to comment may do so via the Commission's general request for public comment, 85 FR 32055, *https://www.federalregister.gov/d/2020-11453,* which solicits feedback on the various other efforts associated with our mandate.

Topic Areas for Comment and Recommendations

The following list of topics represents various areas about which the Commission seeks comments. It is not intended to limit topics that may be addressed by respondents, but rather focus attention on key areas the Commission has identified as relevant to catalyzing AI innovation, expanding the national security innovation base, and making it easier for firms to do business with the federal government. While the Commission welcomes comments on obstacles and barriers in the current system, it will prioritize inputs relative to these topics that make specific recommendations in any or all of the following areas: Statute, regulation, policy, budget, organization, and culture.

Specific Questions To Address

- What are the challenges or obstacles you face in seeking to do business with the Federal Government, to include scaling successful solutions? What changes could be made to reduce or remove those challenges or obstacles?
- How do you weigh the tradeoffs between accepting financing from U.S. firms versus foreign firms? What role could the U.S. Government play in connecting U.S. firms with trusted investors in the United States and allied countries?
- When is the Federal Government a compelling customer? When is it not? What steps could the Federal Government take to become a more compelling customer?
- How could the government better communicate (1) national security challenges to industry and (2) opportunities for industry to demonstrate and iterate potential solutions? How could the government structure engagements with industry to foster innovative and unexpected solutions?
- If your firm were to initiate or expand its national security or national interest work, what large capital investments over the next 24 months would your firm consider making in the United States? How much financial support and in what form (*e.g.,* non-dilutive capital, loan guarantees, equity stakes, or other financial instruments) would be required from the U.S. government to undertake those investments?
- What would you hope to gain from temporary talent exchanges between the Federal Government and industry? What are the challenges or obstacles in conducting such exchanges and how would you recommend they be overcome?
- How can industry and the Federal Government better collaborate through all stages of product development to safeguard against bias in AI systems?
- How can the Federal Government incentivize responsible AI development through acquisition?[1]

Dated: September 17, 2020.

Michael Gable,

Chief of Staff.

[FR Doc. 2020–20922 Filed 9–22–20; 8:45 am]

BILLING CODE 3610–Y8–P

NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE

[Docket No.: 09–2020–02]

National Security Commission on Artificial Intelligence; Notice of Federal Advisory Committee Meeting

AGENCY: National Security Commission on Artificial Intelligence.

ACTION: Notice of Federal Advisory Committee virtual public meeting.

SUMMARY: The National Security Commission on Artificial Intelligence (the ''Commission'') is publishing this notice to announce that the following Federal Advisory Committee virtual public meeting will take place.

DATES: Thursday, October 8, 2020, 1:00 p.m. to 3:30 p.m. Eastern Standard Time (EST).

FOR FURTHER INFORMATION CONTACT: Ms. Angela Ponmakha, 703–614–6379 (Voice), *nscai-dfo@nscai.gov. Mailing address:* Designated Federal Officer, National Security Commission on Artificial Intelligence, 2530 Crystal Drive, Box 45, Arlington, VA 22202. *website: https://www.nscai.gov.* The most up-to-date information about the meeting and the Commission can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA), Sec. 1051, Public Law 115–232, 132 Stat. 1636, 1962–65 (2018), created the Commission to ''consider the methods and means necessary to advance the development of artificial intelligence, machine learning, and associated technologies by the United States to comprehensively address the national security and defense needs of the United States.'' The Commission will consider potential recommendations to Congress and the Executive Branch.

Agenda: The meeting will begin on October 8, 2020 at 1:00 p.m. EST with opening remarks by the Designated Federal Officer, Ms. Angela Ponmakha; the Executive Director, Mr. Yll Bajraktari; the Commission Chair, Dr. Eric Schmidt; and the Commission Vice Chair, Robert Work. Chairs of the working groups studying each of the Commission's lines of effort (LOEs) will present the recommendations from their respective LOEs for consideration by the entire Commission. The Commission's LOEs: LOE 1—Invest in AI Research & Development and Software; LOE 2—Apply AI to National Security Missions; LOE 3—Train and Recruit AI Talent; LOE 4—Protect and Build Upon U.S. Technological Advantages & Hardware; LOE 5—Marshal Global AI Cooperation; LOE 6—Ethics and Responsible AI; and LOE 7—Threat Analysis and Response Actions.

The Commission will deliberate on the presented recommendations and vote on their inclusion in the Commission's interim report to Congress and the Administration. The meeting will adjourn at 3:30 p.m. EST.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the virtual meeting is open to the public from 1:00 p.m. to 3:30 p.m. EST. Members of the public wishing to receive a link to the live stream webcast for viewing and audio access to the virtual meeting should register on the Commission's website, *https://www.nscai.gov.* Registration will be available from September 25, 2020 through October 5, 2020. Members of the media should RSVP to the

[1] In the Second Quarter Recommendations Memo, the Commission proposed ''Key Considerations for Responsible Development & Fielding of AI'' and recommended standards and practices that would apply both to systems developed by departments and agencies, as well as those that are acquired (including Commercial off-the-shelf systems or those developed by contractors). See *Key Considerations for Responsible Development & Fielding of Artificial Intelligence,* National Security Commission on Artificial Intelligence, pg. 6 (July 22, 2020), *https://www.nscai.gov/reports.*

Commission's press office at *press@nscai.gov.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the DFO, see the **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than October 5, 2020, so that appropriate arrangements can be made.

Access to Records of the Meeting: Pursuant to FACA requirements, the meeting materials for the October 8, 2020 virtual meeting will be available for public inspection on the Commission's website at *https://www.nscai.gov* on October 5, 2020.

Written Statements: Written comments may be submitted to the DFO via email to: *nscai-dfo@nscai.gov* in either Adobe Acrobat or Microsoft Word format. The DFO will compile all written submissions and provide them to the Commissioners for consideration. Please note that all submitted comments will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Commission's website.

Dated: September 18, 2020.

Michael Gable,

Chief of Staff.

[FR Doc. 2020–21021 Filed 9–22–20; 8:45 am]

BILLING CODE 3610–Y8–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Graduate Research Fellowships Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of infor

Title of Collection: Graduate Research Fellowship Program.

OMB Number: 3145–0023.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, biological, engineering, social, and other sciences at accredited U.S. institutions selected by the recipient of such aid, for stated periods of time.''

The Graduate Research Fellowship Program has two goals:

- To select, recognize, and financially support, early in their careers, individuals with the demonstrated potential to be high achieving scientists and engineers;
- To broaden participation in science and engineering of underrepresented groups, including women, minorities, persons with disabilities, and veterans.

The list of GRFP Awardees recognized by the Foundation may be found via FastLane through the NSF website: *https://www.fastlane.nsf.gov/grfp/AwardeeList.do?method=loadAwardeeList.* The GRF Program is described in the Solicitation available at: *https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf19590&org=NSF*

Estimate of Burden: This is an annual application program providing three years of support to individuals, usable over a five-year fellowship period. The application deadlines are in late October. It is estimated that each submission is averaged to be 12 hours per respondent, which includes three references (on average) for each application. It is estimated that it takes two hours per reference for each applicant.

Respondents: Individuals.

Estimated Number of Responses: 14,000.

Estimated Total Annual Burden on Respondents: 168,000 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 18, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–20997 Filed 9–22–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; public comment meetings.

SUMMARY: On May 8, 2020, the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice issuing the draft Environmental Impact Statement (EIS) for Interim Storage Partners LLC's (ISP's) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel and Greater-Than Class C waste, along with a small quantity of mixed oxide fuel for

public comment. The NRC is announcing four public comment webinars to receive oral comments on the draft EIS. The meetings will allow interested members of the public to submit their comments.

DATES: The NRC staff will hold webinars on October 1, 2020, October 6, 2020, October 8, 2020, and October 15, 2020. The staff will present the findings of the draft EIS and will receive public comments during transcribed public meetings. Members of the public are invited to continue to submit written comments by November 3, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2016–0231. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: WCS_CISF_EIS@nrc.gov.*

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION SECTION** of this document.

FOR FURTHER INFORMATION CONTACT: James Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6954; email: *James.Park@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' The draft EIS can be found by searching for ADAMS Accession No. ML20122A220. For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *Project web page:* Information related to the ISP CISF project can be accessed on the NRC's ISP CISF web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html.* Scroll down to Environmental Impact Statement, Draft Report for Comment.
- *Public Libraries:* A copy of the staff's draft EIS can be accessed at or through the website of the following public libraries (library access and hours are determined by local policy):
- Eunice Public Library, 1003 Ave. N, Eunice, NM 88231; *https://www.cityofeunice.org/134/Library-Services,* under ''U.S. Nuclear Regulatory Commission Information.''
- Hobbs Public Library, 509 N Shipp St., Hobbs, NM 88240; *http://www.hobbspubliclibrary.org,* under ''News & Updates.''
- Andrews County Library, 109 NW 1st Street, Andrews, TX 79714; *https://www.andrews.lib.tx.us/news-events.*

B. Submitting Comments

Please include Docket ID NRC–2016–0231 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Meeting Information

On May 8, 2020, the NRC published in the **Federal Register** (85 FR 27447) the availability of the draft EIS for ISP's proposed CISF for spent nuclear fuel and requested public comments on the draft report. The NRC is announcing that staff will hold four public webinars to receive comments on the draft EIS. Video of the staff's presentation will be accessible online at the webinar address and all audio will be accessible through the telephone line. The telephone line will also be used for members of the public to submit oral comments. A court reporter will be recording all comments received during the webinar and the transcript of the meeting will be made publicly available. The dates and times for the public webinars follow:

Meeting	Date	Time	Webinar information
Public Webinar	October 1, 2020	6:00 p.m.–9:00 p.m. (ET) 5:00 p.m.–8:00 p.m. (CT) 4:00 p.m.–7:00 p.m. (MT)	Webinar (video). Event address: *https://usnrc.webex.com/.* Event number: 199 125 5213. Event password: ISPDEIS. Telephone access (audio). Phone number: 1–888–989–9268. Passcode: 5300047.
Public Webinar	October 6, 2020	2:00 p.m.–5:00 p.m. (ET) 1:00 p.m.–4:00 p.m. (CT) 12:00 p.m.–3:00 p.m. (MT)	Webinar (video). Event address: *https://usnrc.webex.com/.* Event number: 199 740 4202. Event password: ISPDEIS. Telephone access (audio). Phone number: 1–888–989–9268. Passcode: 5300047.

Meeting	Date	Time	Webinar information
Public Webinar	October 8, 2020	6:00 p.m.–9:00 p.m. (ET) 5:00 p.m.–8:00 p.m. (CT) 4:00 p.m.–7:00 p.m. (MT)	Webinar (video). Event address: *https://usnrc.webex.com/.* Event number: 199 619 8948. Event password: ISPDEIS. Telephone access (audio). Phone number: 1–888–989–9268. Passcode: 5300047.
Public Webinar	October 15, 2020	11:00 a.m.–2:00 p.m. (ET) 10:00 a.m.–1:00 p.m. (CT) 9:00 a.m.–12:00 p.m. (MT)	Webinar (video). Event address: *https://usnrc.webex.com/.* Event number: 199 551 6533. Event password: ISPDEIS. Telephone access (audio). Phone number: 1–888–989–9268. Passcode: 5300047.

Persons interested in attending these meetings should check the NRC's Public Meeting Schedule web page at *https://www.nrc.gov/pmns/mtg* for additional information, agendas for the meetings, and access information for the webinar and telephone line.

Dated: September 18, 2020.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Acting Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–20964 Filed 9–22–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–248 and CP2020–278; MC2020–249 and CP2020–279; MC2020–250 and CP2020–280]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 25, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–248 and CP2020–278; *Filing Title:* USPS Request to Add Priority Mail Contract 661 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Maya Moore; *Comments Due:* September 25, 2020.

2. *Docket No(s).:* MC2020–249 and CP2020–279; *Filing Title:* USPS Request to Add Priority Mail Contract 662 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Maya Moore; *Comments Due:* September 25, 2020.

3. *Docket No(s).:* MC2020–250 and CP2020–280; *Filing Title:* USPS Request to Add Priority Mail Contract 663 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 25, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–21002 Filed 9–22–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: September 14, 2020, at 2:30 p.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On September 14, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Katherine Sigler, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2020–21064 Filed 9–21–20; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89913; File No. SR–Phlx–2020–45]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits at Equity 7, Section 3

September 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits at Equity 7, Section 3, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise its schedule of order execution and routing credits, at Equity 7, Section 3, to add three new credits for member organizations with non-displayed orders that provide liquidity to the Exchange. Presently, the Exchange already provides one such credit—a $0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. For all other non-display orders that provide liquidity, it presently provides no credits. Going forward, the Exchange proposes to add the following new credits for member organizations with non-displayed orders that provide liquidity to the Exchange:

- A $0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume [3] during the month through non-displayed orders (other than midpoint orders) that provide liquidity;
- A $0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and
- A $0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity.

The Exchange believes that the addition of these three new credits will incentivize member organizations to add non-displayed liquidity to the Exchange. Moreover, the proposal broadens the availability of credits to member organizations that add non-displayed liquidity other than midpoint pegging orders. In incentivizing member organizations to increase the extent of their non-displayed liquidity adding activity on the Exchange, the Exchange intends to improve the overall quality and attractiveness of the PSX market.

Impact of the Changes

Those participants that act as significant providers of non-displayed liquidity to the Exchange will benefit directly from the proposed addition of the new credits. Other participants will also benefit from the new credits insofar as any increase in liquidity adding activity on the Exchange will improve the overall quality of the market, to the benefit of all member organizations.

The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits are reasonable in

[3] As used in this Rule, the term ''Consolidated Volume'' shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. *See* Equity 7, Section 3.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits to provide increased overall incentives to members to increase their liquidity adding activity on the Exchange. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those participants that are dissatisfied with the proposed new credits are free to shift their order flow to competing venues that offer them higher credits.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credits fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange as well as to base the receipt of the credits on a member organization engaging in a threshold volume of liquidity adding activity on the Exchange. An increase in overall liquidity adding activity on the Exchange will improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposed Credit Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

To the extent that the proposed changes succeed in increasing liquidity adding activity on the Exchange, this will improve market quality and the attractiveness of the PSX market, to the benefit of all existing and prospective participants.

Moreover, any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all member organizations of the Exchange will benefit from any increase in market activity that the proposal effectuates. Member organizations may grow or modify their businesses so that they can receive the higher credits. Moreover, member organizations are free to trade on other venues to the extent they believe that the credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition from a multitude of other live exchanges and off-exchange venues. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Exchange must continually adjust credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credits change in this market may impose any burden on competition is extremely limited.

The proposed new credits are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises approximately 44% of industry volume.

The Exchange intends for the proposed changes to its schedule of credits to increase member organization incentives to engage in the addition of non-displayed liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–45 and should be submitted on or before October 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20937 Filed 9–22–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89901; File No. SR–CboeBZX–2020–070]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the –1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (''Trust Issued Receipts'')

September 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the –1x Short VIX Futures ETF, a series of VS Trust,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

under Rule 14.11(f)(4) (''Trust Issued Receipts'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 3 to SR-CboeBZX–2020–003 amends and replaces in its entirety the proposal as amended by Amendment No. 2, which was submitted on April 13, 2020, and amended and replaced in its entirety the proposal as amended by Amendment No. 1, which was submitted on March 24, 2020. The original proposal, submitted on January 3, 2020, was amended and replaced in its entirety by Amendment No. 1. The Exchange submits this Amendment No. 3 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade Shares of the –1x Short VIX Futures ETF (the ''Fund'') under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts [3] on the Exchange.[4]

The Fund seeks to provide daily investment results (before fees and expenses), as further described below, that correspond to the performance of a benchmark that seeks to offer short exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Short VIX Futures Index (the ''Index'' or ticker symbol SHORTVOL).[5] The Index measures the daily inverse (*i.e.,* the opposite) performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (''VIX'').[6]

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (''CFE'') (hereinafter referred to as ''VIX Futures Contracts'') based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX Futures Contracts, Volatility Shares LLC (the ''Sponsor'') may cause the Fund to obtain exposure to the Index through Over-the-Counter (OTC) swaps referencing the Index or particular VIX Futures Contracts comprising the Index (hereinafter referred to as ''VIX Swap Agreements''). The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

The Sponsor, a Delaware limited liability company, serves as the Sponsor of VS Trust (the ''Trust''). The Sponsor is a commodity pool operator.[7] Tidal ETF Services LLC serves as the administrator (the ''Administrator'') and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC serves as the sub-administrator (the ''Sub-Administrator'') and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared. The Fund will collateralize its obligations with Cash and Cash Equivalents [8] consistent with the 1940 Act and interpretations thereunder.

The Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty.

The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with its counterparties whereby both sides exchange collateral

[3] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR–BZX–2012–044).

[5] The Index is sponsored by Cboe Global Indexes (the ''Index Sponsor''). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

[6] The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

[7] The Fund has filed a draft registration statement on Form S–1 under the Securities Act of 1933, dated December 6, 2019 (File No. 377–02945) (''Draft Registration Statement''). The description of the Fund and the Shares contained herein are based on the Draft Registration Statement. The Fund will not trade on the Exchange until such time as there is an effective registration statement for the Fund.

[8] For purposes of this proposal, the term ''Cash and Cash Equivalents'' shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (''Cboe'') (hereinafter referred to as ''VIX Options Contracts'').

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral in the above referenced VIX Futures Contracts, VIX Swap Agreements, and VIX Option Contracts (collectively referred to as the ''VIX Derivative Products'').

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately as much on a percentage basis as the level of the Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of the Index when it declines. The Fund primarily acquires short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value (''NAV'') calculation of the Fund. However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund's investments in VIX Derivative Products.

The Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Fund seeks to remain fully invested at all times in VIX Derivative Products (and Cash and Cash Equivalents as collateral) [9] that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction.

In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX, as illustrated below.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Fund should be expected to perform very differently from the inverse of the VIX over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or ''spot,'' volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

Short VIX Futures Index

The Index is designed to express the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (the ''Index Components''), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises. Further, as described above, because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX.

Unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded exclusively on Cboe.

Calculation of the Index

The Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (the ''Cboe VIX Monthly Futures Settlement Date''), and runs to the Tuesday prior to the subsequent month's Cboe VIX Monthly Futures Settlement Date.

The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day [10] by Bloomberg and Reuters.

Mitigating Price Impacts to VIX Futures Contract Prices at Times of Fund Rebalancing

The Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For

[9] *Supra* note 6.

[10] A ''Business Day'' means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX futures contracts. The Sponsor will seek to minimize the market impact of Fund rebalances on the price of VIX futures contracts by limiting the Fund's participation, on any given day, in VIX futures contracts to no more than one-quarter of the contracts traded on Cboe Futures Exchange (the ''CFE'') during any Rebalance Period (defined by the Index methodology as 3:45 p.m.–4 p.m. ET). If the Fund's portfolio rebalance exceeds one-quarter of the futures' volume between 3:45 p.m. and 4 p.m. ET, the Sponsor will extend the rebalance period (the ''Extended Rebalance Period) to include, for example, the period between 4 p.m. and 4:15 p.m. ET and the Trade At Settlement market (''TAS'').

The Sponsor expects that allowing the Fund to participate in an Extended Rebalance Period will minimize the impact on the price of VIX futures contracts, and particularly minimize any impact of large Fund rebalances during periods of market illiquidity.[11] Accordingly, by defining an explicit rebalancing methodology and limiting the Fund's participation in the VIX futures contracts should reduce the impact of the Fund's rebalancing on the price of VIX futures contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary volatility or illiquidity in VIX futures contracts. For example, in surveying the two most volatile months in recent history—February 2018 and March 2020—and assuming a size equal to the largest previously achieved by an inverse VIX ETP ($1.9 billion—Symbol: XIV on February 1, 2018), the Fund would have exceeded one-quarter of the trading volume of VIX futures contracts during the Rebalance Period for seven days in February 2018 and for five days in March 2020. Having the Fund participate in an Extended Rebalance Period on those days would have resulted in a maximum participation in VIX futures contracts over the Extended Rebalance Period of 14.1% in February 2018 and 12.6% in March 2020.

Purchases and Redemptions of Creation Units

The Fund will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof (''Creation Units''). A Creation Unit is a block of at least 10,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Sub-Administrator to create one or more Creation Units.[12] The total cash payment required to create each Creation Unit is the NAV of at least 10,000 Shares of the Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Sub-Administrator to redeem one or more Creation Units. The redemption proceeds from the Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Fund requested in the authorized participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Fund's Shares will be calculated by the Sub-Administrator once each Business Day and will be disseminated daily to all market participants at the same time.[13] Pricing information for the Shares will be available on the Fund's website at *www.volatilityshares.com,* including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices and settlement prices of the Index Components (*i.e.,* the first- and second-month VIX Futures Contracts) will also be readily available from the websites of CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component VIX Futures Contracts underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day by Bloomberg and Reuters. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications of Index Components (*i.e.,* first-month and second-month VIX Futures Contracts) underlying the Index are also available on Bloomberg and Reuters.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-

[11] Research on the impact of the portfolio rebalancing of VIX Exchange Traded Products (''VIX ETPs'') on VIX futures' prices suggests that large rebalancing trades from inverse and leveraged VIX ETPs have a smaller than expected price impact on VIX futures. *See* Brøgger, S.B., *The Market Impact of Uninformed Flows: Evidence from the VIX Futures Market* (2019). Available at: SSRN 3497537. This has been explained as resulting from the predictability of rebalancing flows from large VIX ETPs being priced into the VIX futures. *See* Todorov, K., *Passive Funds Actively Affect Prices: Evidence from the Largest ETF Markets* (2019). Unpublished working paper, London School of Economics. Further research shows that the presence of ETF flow in an underlying market actually improves underlying liquidity. In that study they found bid-ask spreads to be narrower, order book deeper, and market resiliency larger on days when ETFs performed a rebalance, finding that this increased liquidity stemmed from a larger number of trading accounts that supplied liquidity to exploit the predictable order flow from rebalancing ETFs. Accordingly, one can assume that liquidity in VIX futures contracts during the Fund's rebalancing period will be expected to grow, and this will reduce the fraction of the trading activity that the Fund's rebalance will contribute to the VIX futures market. Bessembinder, H., Carrion, A., Tuttle, L. and Venkataraman, K., *Liquidity, Resiliency and Market Quality Around Predictable Trades: Theory and Evidence.* Journal of Financial Economics, 121(1) (2016), pp.142–166.

[12] Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders.

[13] NAV means the total assets of the Fund including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. The Fund's NAV is calculated at 4 p.m. ET.

sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Fund's website at *www.volatilityshares.com* will display the end of day closing Index level, and NAV per Share for the Fund. The Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Derivative Products, and characteristics of such instruments, as well as Cash and Cash Equivalents held in the portfolio of the Fund. This website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Fund of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Intraday Indicative Value (''IIV'') will be calculated. The IIV is an indicator of the value of the Fund's holdings, which include the VIX Derivative Products and Cash and Cash Equivalents less liabilities of the Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.[14]

In addition, the IIV will be published on the Exchange's website and will be available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

Initial and Continued Listing

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Sponsor of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. All of the VIX Futures Contracts and VIX Options Contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[15] The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Fund, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. All statements and representations made in this filing regarding the Index composition, description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference the Index, reference asset, and IIV, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

[14] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4 p.m. ET.

[15] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.* The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the Shares; [16] (4) how information regarding the IIV and the Fund's holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening [17] and After Hours Trading Sessions [18] when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Further, the Exchange states that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inversed leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009), and 09–65 (November 2009) (collectively, ''FINRA Regulatory Notices''). Members that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, the Fund will seek daily investment results, before fees and expenses, that correspond to the Index, which measures daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the VIX. The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. The return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Fund's registration statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [19] in general and Section 6(b)(5) of the Act [20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts and VIX Options Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Fund's holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading

[16] Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states ''[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

[17] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

[18] The After Hours Trading Session is from 4 p.m. to 8:00 p.m. ET.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX futures contracts. The Sponsor will seek to minimize the market impact of Fund rebalances on the price of VIX futures contracts by limiting the Fund's participation, on any given day, in VIX futures contracts to no more than one-quarter of the contracts traded on CFE during any Rebalance Period (defined by the Index methodology as 3:45 p.m.–4 p.m. ET). If the Fund's portfolio rebalance exceeds one-quarter of the futures' volume between 3:45 p.m. and 4 p.m. ET, the Sponsor will extend the rebalance period to include, for example, the period between 4 p.m. and 4:15 p.m. ET and TAS.

The Sponsor expects that allowing the Fund to participate in an Extended Rebalance Period will minimize the impact on the price of VIX futures contracts, and particularly minimize any impact of large Fund rebalances during periods of market illiquidity. Accordingly, by defining an explicit rebalancing methodology and limiting the Fund's participation in the VIX futures contracts should reduce the impact of the Fund's rebalancing on the price of VIX futures contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary volatility or illiquidity in VIX futures contracts. For example, in surveying the two most volatile months in recent history—February 2018 and March 2020—and assuming a size equal to the largest previously achieved by an inverse VIX ETP ($1.9 billion—Symbol: XIV on February 1, 2018), the Fund would have exceeded one-quarter of the trading volume of VIX futures contracts during the Rebalance Period for seven days in February 2018 and for five days in March 2020. Having the Fund participate in an Extended Rebalance Period on those days would have resulted in a maximum participation in VIX futures contracts over the Extended Rebalance Period of 14.1% in February 2018 and 12.6% in March 2020.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–070. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–070 and should be submitted on or before October 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20938 Filed 9–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89902]

Order Granting Applications by Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

September 17, 2020.

Nasdaq BX, Inc. (''BX''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq ISE, LLC (''ISE''), Nasdaq MRX, LLC (''MRX''), and Nasdaq PHLX LLC (''Phlx'') (collectively, the ''Nasdaq Affiliated Exchanges'') have filed with the Securities and Exchange Commission (''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] from the rule filing requirements of Section 19(b) of the Exchange Act [2] with respect to certain rules of The Nasdaq Stock Market LLC (''Nasdaq''), an affiliate of the Nasdaq Affiliated Exchanges, that the Nasdaq Affiliated Exchanges seek to incorporate by reference.[3] Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

Recently, the Nasdaq Affiliated Exchanges each filed a proposed rule change [4] under Section 19(b) of the Exchange Act to replace their existing investigatory, disciplinary, and adjudicatory rules with those contained in the Nasdaq Rule 8000 and 9000 Series, as such rules may be in effect from time to time, with certain specified exceptions. In the proposed rule changes, BX proposed to incorporate by reference the Nasdaq Rule 8000 and 9000 Series into General 5, Sections 1 and 2 of the BX rulebook, and GEMX, ISE, MRX, and Phlx each proposed to incorporate by reference the Nasdaq Rule 8000 and 9000 Series into General 5, Sections 2 and 3 of their respective rulebooks, thus making these Nasdaq rules applicable to the Nasdaq Affiliated Exchanges' respective members, member organizations,[5] associated persons, and other persons subject to their jurisdiction. When the proposed rule changes become operative, the Nasdaq Affiliated Exchanges' members, member organizations, associated persons, and other persons subject to the jurisdiction of the Nasdaq Affiliated Exchanges will be required to comply with the Nasdaq Rule 8000 and 9000 Series as though such rules are fully set forth within each of the Nasdaq Affiliated Exchanges' rulebooks.

The Nasdaq Affiliated Exchanges have requested, pursuant to Rule 0–12 under the Exchange Act,[6] that the Commission grant the Nasdaq Affiliated Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to each of the Nasdaq Affiliated Exchanges' rules that are effected solely by virtue of a change to the Nasdaq Rule 8000 and 9000 Series that are incorporated by reference. Specifically, the Nasdaq Affiliated Exchanges request that they be permitted to incorporate by reference changes made to the Nasdaq Rule 8000 and 9000 Series that are cross-referenced in each of the Nasdaq Affiliated Exchanges' rules, without the need for each of the Nasdaq Affiliated Exchanges to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.[7]

The Nasdaq Affiliated Exchanges represent that the Nasdaq Rule 8000 and

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

[3] *See* Letter from Angela S. Dunn, Principal Associate General Counsel, Nasdaq, Inc., to Vanessa Countryman, Secretary, Commission, dated June 15, 2020 (''Exemption Request'').

[4] *See* Securities Exchange Act Release Nos. 88938 (May 26, 2020), 85 FR 33235 (June 1, 2020) (SR–BX–2020–009); 89071 (June 15, 2020), 85 FR 37129 (June 19, 2020) (SR–GEMX–2020–15); 89069 (June 15, 2020), 85 FR 37120 (June 19, 2020) (SR–ISE–2020–22); 89070 (June 15, 2020), 85 FR 37142 (June 19, 2020) (SR–MRX–2020–12); and 88519 (March 31, 2020), 85 FR 19203 (April 6, 2020) (SR–Phlx–2020–09).

[5] The Commission notes that the term ''member organization,'' as defined under Phlx General 1, Section 1(17), applies only to legal entities that are members of the Phlx exchange, and is not utilized by any other of the Nasdaq Affiliated Exchanges. *See* Exemption Request, *supra* note 3, at 2 n.5. *See also* Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672, 56672 n.3 (November 29, 2017) (SR–Phlx–2017–92) (describing that, on the Phlx exchange, the term ''member'' refers to a natural person, whereas the term ''member organization'' refers to an entity, which must have at least one ''member,'' as that term is defined by the Phlx exchange).

[6] 17 CFR 240.0–12.

[7] *See* Exemptive Request, *supra* note 3, at 2.

9000 Series are not trading rules. Moreover, the Nasdaq Affiliated Exchanges state that in each instance, the Nasdaq Affiliated Exchanges propose to incorporate by reference categories of rules (rather than individual rules within a category) that are regulatory in nature. The Nasdaq Affiliated Exchanges will, as a condition of this exemption, provide written notice to their respective members (or member organizations) whenever Nasdaq proposes a change to its Rule 8000 and 9000 Series.[8] Such notice will alert the members (or member organizations) of each of the Nasdaq Affiliated Exchanges to the proposed rule change and give them an opportunity to comment on the proposal. The Nasdaq Affiliated Exchanges state that they will also inform their respective members (or member organizations) in writing when the Commission approves any such proposed rule changes.[9]

The Nasdaq Affiliated Exchanges believe this exemption is necessary and appropriate because it will result in the Nasdaq Affiliated Exchanges' rules being consistent with the relevant cross-referenced Nasdaq rules at all times, thus ensuring that the Nasdaq Affiliated Exchanges and Nasdaq maintain a harmonious system of investigating, disciplining, and adjudicating the rights of their respective members, member organizations, associated persons, and other persons subject to their jurisdiction. Without such an exemption, the Nasdaq Affiliated Exchanges and Nasdaq could subject their respective members, member organizations, associated persons, and other persons subject to their jurisdiction to different standards for investigations and disciplinary actions.[10]

The Commission has issued exemptions similar to the Nasdaq Affiliated Exchanges' request.[11] In granting one such exemption in 2010, the Commission repeated a prior, 2004 Commission statement that it would consider similar future exemption requests from other self-regulatory organizations (''SROs''), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act; [12]
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[13]

The Commission believes that the Nasdaq Affiliated Exchanges have satisfied each of these conditions. The Commission also believes that granting the Nasdaq Affiliated Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and Nasdaq Affiliated Exchanges' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[14] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Nasdaq Affiliated Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules they have incorporated by reference. This exemption is conditioned upon the Nasdaq Affiliated Exchanges promptly providing written notice to their members (or member organizations) whenever Nasdaq changes a rule that the Nasdaq Affiliated Exchanges have incorporated by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,[15] that the Nasdaq Affiliated Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in their request that incorporate by reference certain Nasdaq rules that are the result of changes to such Nasdaq rules, provided that the Nasdaq Affiliated Exchanges promptly provide written notice to their members (or member organizations) whenever Nasdaq proposes to change a rule that the Nasdaq Affiliated Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20936 Filed 9–22–20; 8:45 am]

BILLING CODE 8011–01–P

[8] The Nasdaq Affiliated Exchanges state that they will provide such notice on their websites in the same section they use to post their own proposed rule change filings pursuant to Rule 19b–4(*l*) within the timeframe required by such Rule. In addition, the Nasdaq Affiliated Exchanges state that their websites will also include a link to the Nasdaq website where the proposed rule change filings are located. *Id.* at 3 n.8.

[9] *Id.* at 3.

[10] *Id.* at 2.

[11] *See, e.g.,* Securities Exchange Act Release Nos. 83887 (August 20, 2018), 83 FR 42722 (August 23, 2018) (order granting exemptive request from Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC relating to rules of Nasdaq BX, Inc. incorporated by reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR–BX–2012–030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); and 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

[12] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (''Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule'').

[13] *See* BATS Options Market Order, supra note 11 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

[14] *See* BATS Options Market Order, *supra* note 11, 75 FR at 8761; *see also* 2004 Order, *supra* note 13, 69 FR at 8502.

[15] 15 U.S.C. 78mm.

[16] 17 CFR 200.30–3(a)(76).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–420, OMB Control No. 3235–0479]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15c2–7

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995

(''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–7 (17 CFR 240.15c2–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 3,647 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that figure to represent the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as the OTC Bulletin Board (''OTCBB''), or OTC Link, operated by OTC Markets Group Inc. (''OTC Link'') or the electronic trading platform operated by Global OTC. According to representatives of OTC Link, Global OTC and the OTCBB, none of those entities has recently received, or anticipates receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (×) 45 seconds/notice).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: September 17, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20929 Filed 9–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89915; File No. SR–NASDAQ–2020–044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of Proposed Rule Change To Adopt Listing Rule IM–5900–8 To Offer a Complimentary Global Targeting Tool to Acquisition Companies Listed Pursuant to Nasdaq IM–5101–2 That Have Publicly Announced Entering Into a Binding Agreement for a Business Combination

September 17, 2020.

I. Introduction

On July 15, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to offer a complimentary global targeting tool to an acquisition company that has publicly announced entering into a binding agreement for a business combination. The proposed rule change was published in the **Federal Register** on August 3, 2020.[2] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

Generally, Nasdaq does not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of a company whose business plan is to complete an initial public offering (''IPO'') and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the company meets all applicable initial listing requirements, as well as certain additional conditions described in Nasdaq Rule IM–5101–2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions). Rule IM–5101–2 requires, among other things, that at least 90% of the gross proceeds from the IPO and any concurrent sale by the company of equity securities must be deposited in a ''deposit account,'' as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.[3]

The Exchange proposes to adopt Nasdaq IM 5900–8, to allow Nasdaq, through its affiliate Nasdaq Corporate Solutions, LLC, to offer a company listed under IM–5101–2 (''Acquisition Company'') a complimentary global

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 89413 (July 28, 2020), 85 FR 46759 (''Notice'').

[3] *See* Rule IM–5101–2(a) and (b). Nasdaq IM–5101–2 also requires that following each business combination, the combined company must meet the requirements for initial listing. *See infra* note 12. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in the IM–5101–2, Nasdaq will issue a Staff Delisting Determination under Nasdaq Rule 5810 to delist the company's securities. *See* Rule IM–5101–2(d).

targeting tool following the public announcement that the company entered into a binding agreement for the business combination intended to satisfy the conditions in IM–5101–2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.[4]

Proposed Nasdaq IM–5900–8 states that, through this global targeting tool, investor targeting specialists will help focus the Acquisition Company's investor relations efforts on appropriate investors, tailor messaging to their interests and measure the company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the company's long-term ownership strategy. Such analysis will include addressable risks and opportunities by region and investor type, and recommendations for where to focus time. According to the Exchange, this service has a retail value of approximately $44,000 per year.[5]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[6] Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[8] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to offer a complimentary global targeting tool to all Acquisition Companies[9] following the public announcement of a binding agreement to enter into a business combination intended to satisfy the conditions in Nasdaq IM–5101–2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated. As stated in its proposal, the Exchange has observed that once an Acquisition Company publicly announces a business combination with an operating company, the Acquisition Company needs to identify and target investors appropriate for the new business and specifically target investors who are interested in investing in the acquired business.[10] The Exchange stated that such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to investors and diminish potential redemptions at the time of the business combination with the operating company.[11] In addition, the Exchange believes that such diminished redemptions may help Acquisition Companies remain in compliance with other listing requirements, including the shareholder requirement for continued listing.[12] The Exchange further stated that offering the tool for 60 days following the completion of the business combination will allow for a smooth transition to the traditional operating company model and avoid disruption of the service during the completion of the business combination transaction.[13]

As noted in the order approving Nasdaq IM–5900–7, Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an Exchange not unfairly discriminate between issuers.[14] The Commission believes that the Exchange has reasonably justified treating an Acquisition Company that has publicly announced that it has entered into a binding agreement to enter into a business combination differently than other companies, including Acquisition Companies that have not yet announced that they have entered into a business combination. As discussed above, Acquisition Companies have an increased need to focus on identifying and communicating with shareholders and prospective investors following the public announcement of entering into a business combination. In addition, the Exchange stated that at this time in an Acquisition Company's lifecycle, the company is transitioning to the traditional operating company model

[4] *See* proposed IM–5900–8. As set forth in Nasdaq IM–5900–7 (Services Offered to Certain Newly Listing Companies), the Exchange currently offers certain newly listing companies complimentary services to help them satisfy their obligations as public companies related to governance and communications, and to provide intelligence about their securities. These services are offered to companies listing on the Global or Global Select Market, based on market capitalization, in connection with their IPO in the United States, including American Depository Receipts (other than a company listed under IM–5101–2); upon emerging from bankruptcy; in connection with a spin-off or carve-out from another company; in connection with a Direct Listing as defined in IM–5315–1 (including the listing of American Depository Receipts); or in conjunction with a business combination that satisfies the conditions in IM–5101–2(b) (''Eligible New Listings''). These complimentary services are also offered, based on market capitalization, to companies (other than a company listed under IM–5101–2) switching their listing from the New York Stock Exchange to the Global or Global Select Markets (''Eligible Switches''). Nasdaq does not currently offer complimentary services to companies listing on the Nasdaq Capital Market or to Acquisition Companies listing on any market tier. *See* Nasdaq IM–5900–7. The Exchange stated that, in certain circumstances, under the proposal an Acquisition Company may be eligible to receive services under both IM–5900–7 and proposed IM–5900–8 for a short period of time following the completion of a business combination pursuant to IM–5101–2.

[5] *See* proposed IM–5900–8.

[6] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] This would include Acquisition Companies listed on the Nasdaq Capital, Global, and Global Select Markets. Nasdaq does not currently offer complimentary services under IM–5900–7 to companies listing on the Nasdaq Capital Market so this rule proposal will be the first time the Exchange provides the same service on all three listing tiers. *See supra* note 4.

[10] *See* Notice, *supra* note 2, at 46760.

[11] *See id.* The Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination. *See* IM–5101–2(d) and (e).

[12] *See* Notice, *supra* note 2, at 46761. Listing Rule 5450(a)(2) requires at least 400 Total Holders for continued listing on the Nasdaq Global Market. Listing Rule 5550(a)(3) requires at least 300 Public Holders for continued listing on the Nasdaq Capital Market. The Commission notes, however, that these continued listing requirements only apply during the continued listing of the Acquisition Company prior to any business combination. Nasdaq IM–5101–2 requires that, at the time of a business combination, the combined company would need to meet all applicable initial listing requirements. *See supra* note 3. For initial listing, among other requirements, Listing Rule 5405(a)(3) requires at least 400 Round Lot Holders on Nasdaq Global Market and Listing Rule 5505(a)(3) requires at least 300 Round Lot Holders on Nasdaq Capital Market.

[13] *See* Notice, *supra* note 2, at 46761. The Exchange stated that Acquisition Companies do not have operating businesses and, therefore, do not generally need shareholder communication services, market analytic tools or market advisory tools. As a result, these companies do not receive complimentary services under Nasdaq IM–5900–7, but would be eligible to receive services under IM–5900–7 when listing on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in IM–5101–2(b). *See id.* at 46760. *See also* IM–5900–7. While the Exchange noted that a company may be eligible to receive services under both IM–5900–7 and proposed IM–5900–8 for a short period of time following the completion of a business combination, the Commission notes that such eligibility would be restricted to the global targeting tool and would be limited to no more than 60 days. *See supra* note 4.

[14] 15 U.S.C. 78f(b)(5); *see also* Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (approving NASDAQ–2011–122) (''2011 Approval Order'').

and the complimentary global targeting tool will help ease this transition.[15]

The Commission also believes that describing in the Exchange's rules the products and services available to listed companies and their associated values adds greater transparency to the Exchange's rules and to the fees applicable to such companies and will ensure that individual listed companies, including Acquisition Companies, are not given specially negotiated packages of products or services to list, or remain listed, that would raise unfair discrimination issues under the Act.[16] The Commission has previously found that the package of complimentary services offered to Eligible New Listings and Eligible Switches, which includes the global targeting tool, is equitably allocated among issuers consistent with Section 6(b)(4) of the Act.[17] Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for offering a complimentary global targeting tool to Acquisition Companies that have announced that they have entered into a binding agreement to enter into a business combination until 60 days following the completion of the business combination (or such time that the Acquisition Company publicly announces that such agreement is terminated), and that this change does not unfairly discriminate among issuers and is consistent with the Act.

The Commission also believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. The Exchange stated in its proposal that it faces competition in the market for listing services and the Commission understands that the Exchange competes, in part, by offering complimentary services to companies.[18] The Exchange further stated it believes the offering of the complimentary global targeting tool will provide an incentive to Acquisition Companies to list on Nasdaq.[19] Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[20]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASDAQ–2020–044) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20935 Filed 9–22–20; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2020–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board approves the fourth quarter 2020 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2020 RCAF (Unadjusted) is 0.941. The fourth quarter 2020 RCAF (Adjusted) is 0.394. The fourth quarter 2020 RCAF–5 is 0.372.

DATES: *Applicable Date:* October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted at *http://www.stb.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238.

Decided: September 16, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–20939 Filed 9–22–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0026]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 14, 2020. The exemptions expire on September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0026* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

[15] *See* Notice, *supra* note 2, at 46761.

[16] *See* Exchange Act Release No. 79366, 81 FR 85663 at 85665 (approving SR–NASDAQ–2016–106) (''2016 Approval Order'') (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)). The Commission notes that the Exchange also stated that no other company will be required to pay higher fees as a result of the proposal and that providing the complimentary global targeting tool will have no impact on the resources available for its regulatory programs. *See* Notice, *supra* note 2, at 46760.

[17] *See* 2016 Approval Order, *supra* note 16, at 85665.

[18] *See* Notice, *supra* note 2, at 46761. The Commission notes that the complimentary services under the proposal will be provided by Nasdaq Global Solutions, LLC, an affiliate of Nasdaq. The Commission has previously stated that providing complimentary services to its listed companies through an affiliate as opposed to a third party vendor is among the different ways Nasdaq competes for listings and provides services to listed companies and that this reflects the competitive environment. *See* 2011 Approval Order, *supra* note 14, at 79267. The Exchange also noted that other providers could compete by offering similar services to Acquisition Companies. *See* Notice, *supra* note 2, at 46761.

[19] *See* Notice, *supra* note 2, at 46760.

[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On August 7, 2020, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (85 FR 48065). The public comment period ended on September 8, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Ymarc Anthony Ancheta (CT)
Victor Contreras (IL)
Chauncey Crawford (OH)
Jonathan Kelly (TX)
Robert King (MI)
Steven Levine (MN)
Eddie Martinez (TX)
Willie Miller (IA)
John Racine (NC)
Mark Slieter (KS)
Keith Soch (TX)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–20962 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0049]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial

motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 8, 2020. The exemptions expire on September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0049* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On August 7, 2020, FMCSA published a notice announcing receipt of applications from five individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (85 FR 48063). The public comment period ended on September 8, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the August 7, 2020, **Federal Register** notice (85 FR 48063) and will not be repeated in this notice.

These five applicants have been seizure-free over a range of nine to 35 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the five exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Diego Dasilva (MA)
Brian Duncan (IL)
Clint Honea (AL)
Daryl James (NY)
Michael Shorty (NM)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–20963 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0139]

Entry-Level Driver Training: United Parcel Service, Inc. (UPS); Reconsideration of Denial of Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; request for comments.

SUMMARY: FMCSA announces that United Parcel Service, Inc. (UPS) seeks reconsideration of the Agency's denial of its application for exemption from provisions in the Entry-Level Driver Training (ELDT) final rule requiring two years of experience for training instructors. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for two years. UPS also believes that a two-year experience requirement doesn't automatically equate to success as a commercial motor vehicle (CMV) driver trainer. UPS makes this reconsideration request to ensure that it can continue to exceed the current regulatory requirements and provide proper training of its drivers and improve highway and public safety. FMCSA requests public comment on the UPS application for reconsideration.

DATES: October 23, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2019–0139 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Deliver comments to Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0139), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0139'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0139'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

The Entry-Level Driver Training (ELDT) final rule was adopted pursuant to 49 U.S.C. 31305(c). The rule is based in part on consensus recommendations from the Agency's ELDT Advisory Committee, a negotiated rulemaking committee. The rule enhances the safety of CMV operations on our Nation's highways by establishing a minimum standard for ELDT and increasing the number of drivers who receive ELDT. The rule revises 49 CFR part 380, Special Training Requirements, to include, among other things, driver training instructor qualifications. Under 49 CFR 380.713 a driver training instructor must have two years' experience and have held a commercial driver's license (CDL) for two years, as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor in 49 CFR 380.605.

On June 19, 2019, FMCSA published a UPS application for exemption from two provisions of the ELDT final rule and requested public comment [84 FR 28623]. UPS requested an exemption from (1) the requirement in 49 CFR 380.713 that a driver training instructor hold a Commercial Driver's License (CDL) and have two years' experience driving a commercial motor vehicle (CMV), as set forth in the definitions of ''behind-the-wheel (BTW) instructor'' and ''theory instructor;'' and (2) the requirement in 49 CFR 380.703(a)(7) to register each training location in order to obtain a unique Training Provider Registry (TPR) number applicable to that location.

The Agency received 112 comments, including 58 supporting the requested exemptions and 51 opposing them. Three other commenters had no position either for or against the application and provided no substantive comments.

On December 9, 2019, the Agency denied the UPS exemption request because the application did not provide an analysis of the safety impacts the requested exemptions may cause, as required by 49 CFR 381.310(c)(4), and did not explain how the exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulations, as required by 49 CFR 381.310(c)(5).

IV. Request for Reconsideration of Agency Decision

On July 1, 2020, UPS requested that FMCSA reconsider its denial of the exemption from 49 CFR 380.713. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for two years. The company also believes that a two-year experience requirement doesn't automatically equate to success as a CMV driver trainer. UPS has provided the Agency with updated information since the original denial illustrating that many of their locations have experienced turnover issues with driver trainers. UPS stated that it has had to hire 100 candidates to attempt to net the 50 trainer positions necessary across the U.S. Of the 100 hired, UPS has been able to retain only 38 trainers for the reasons explained in the request for reconsideration. A copy of the UPS application is in the docket listed at the beginning of the this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on UPS' request for reconsideration of its application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–21025 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0027]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 23, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2020–0027 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0027.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0027), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0027.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0027* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 21 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Joel Alfaro

Mr. Alfaro, 53, holds a class E license in Florida.

Adrian Almanza

Mr. Almanza, 26, holds a class D license in Illinois.

Jimmy Benavides

Mr. Benavides, 65, holds a class B CDL in Texas.

James Bryan

Mr. Bryan, 37, holds a class D license in Arkansas.

Richard Clark

Mr. Clark, 27, holds a class D license in Idaho.

Jules Garcia

Mr. Garcia, 47, holds a class D license in Illinois.

Calvin Gousby

Mr. Gousby, 54, holds a class C license in Nevada.

Nicholas Gramarossa

Mr. Gramarossa, 30, holds an operator license in Indiana.

William Heath

Mr. Heath, 45, holds a class C license in North Carolina.

Ryan King

Mr. King, 24, holds a class C license in North Carolina.

Alexander Lowe

Mr. Lowe, 31, holds a class A license in Washington.

Kenneth Morrison

Mr. Morrison, 64, holds a class A license in New York.

Darren Norton

Mr. Norton, 36, holds a class F license in Missouri.

Raphael Pittenger

Mr. Pittenger, 54, holds a class A license in Washington.

Marty Posey

Mr. Posey, 47, holds an operator license in Indiana.

David Sanders

Mr. Sanders, 42, holds a class D license in Illinois.

Muhammad Shafi

Mr. Shafi, 36, holds a class D license in Illinois.

Nolen Soler

Mr. Soler, 43, holds a class F license in Nebraska.

Donald Taylor

Mr. Taylor, 58, holds a class C license in North Carolina,

Anthony Vasquez

Mr. Vasquez, 27, holds a class C license in Texas.

Daniel Zeolla

Mr. Zeolla, 33, holds a class CM license in Pennsylvania.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–20961 Filed 9–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the Calendar Year (CY) 2020 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Announcement of NMTC Allocation availability.

Dates:

TABLE 1—CY 2020 ALLOCATION ROUND NMTC PROGRAM CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline/date	Time (eastern time—ET)	Submission method
Community Development Entity (CDE) Certification Application.	October 6, 2020	11:59 p.m. ET	Electronically via the Awards Management Information System (AMIS).
Request to modify CDE certification service area.	October 6, 2020	11:59 p.m. ET	Electronically via AMIS.
Subsidiary CDE Certification Application for meeting Qualified Equity Investment (QEI) issuance thresholds.	October 6, 2020	11:59 p.m. ET	Electronically via AMIS.
CY 2020 Application Registration	October 9, 2020	5:00 p.m. ET	Electronically via AMIS.
Last date to contact CDFI Fund staff	November 12, 2020	5:00 p.m. ET	Electronically via AMIS.
CY 2020 Allocation Application (including required Attachments).	November 16, 2020	5:00 p.m. ET	Electronically via AMIS.
Amendment request to add Subsidiary CDEs to Allocation Agreements for meeting QEI issuance thresholds.	December 4, 2020	11:59 p.m. ET	Electronically via AMIS.
QEI Issuance and making Qualified Low Income Community Investments (QLICIs) by:.	January 15, 2021	11:59 p.m. ET	Not Applicable.
Reporting QEIs and QLICIs closed as of January 15, 2021.	January 29, 2021	11:59 p.m. ET	Electronically via AMIS.

Executive Summary: This NOAA is issued in connection with the CY 2020 allocation round (Allocation Round) of the New Markets Tax Credit Program (NMTC Program), as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) as amended. (26 U.S.C. 45D). Through the NMTC Program, the Community Development Financial Institutions Fund (CDFI Fund) provides authority to certified CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces the availability of $5 billion of NMTC Allocation authority in this Allocation Round. In this NOAA, the CDFI Fund specifically addresses how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. Programmatic changes from the CY 2019 allocation round:

1. Prior QEI Issuance Requirements: Prior-year NMTC Allocatees will be subject to minimum thresholds for QEI issuance and closing of QLICIs with respect to their prior-year NMTC Allocations. These thresholds and deadlines have been revised in comparison to the CY 2019 NOAA. See Section III.3 of this NOAA for additional details.

2. NMTC Application Registration (Application Registration): CY 2020 Allocation Round Applicants are first required to complete and save the Application Registration section of the NMTC Allocation Application in AMIS by the Application Registration deadline in order to be able to submit the remaining sections of CY 2020 Allocation Application by the Application deadline. Applicants that do not complete and save the Application Registration by the Application Registration deadline, will not be able to subsequently submit a CY 2020 Allocation Application in AMIS.

II. Allocation Information

A. Allocation amounts: Pursuant to the Taxpayer Certainty and Disaster Tax Relief Act of 2019, the CDFI Fund expects that it may allocate to CDEs the

authority to issue to their investors the aggregate amount of $5 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it may issue up to $100 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit applications in response to this NOAA, and in any amounts it deems appropriate.

B. Type of award: NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. Program guidance and regulations: This NOAA describes application and NMTC Allocation requirements for this Allocation Round of the NMTC Program and should be read in conjunction with: (i) The final NMTC Program Income Tax Regulations issued by the Internal Revenue Service (IRS) (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (ii) the application and related materials for this Allocation Round. All such materials may be found on the CDFI Fund's website at *https://www.cdfifund.gov.* The CDFI Fund requires Applicants to review these documents. Capitalized terms used, but not defined, in this NOAA have the respective meanings assigned to them in the NMTC Program Allocation Application, Internal Revenue Code (IRC) § 45D or the IRS NMTC regulations. In the event of any inconsistency between this NOAA, the Allocation Application, and guidance issued by the CDFI Fund thereto, IRC § 45D or the IRS NMTC Regulations, the provisions of IRC § 45D and the IRS NMTC Regulations shall govern.

D. Allocation Agreement: Each Allocatee must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC Allocation is effective. The Allocation Agreement contains the terms and conditions of the NMTC Allocation. For further information, see Section VI of this NOAA.

E. Statutory and national policy requirements: The CDFI Fund will manage and administer the NMTC Program in a manner so as to ensure that NMTC Allocations associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: Including, but not limited to, those protecting free speech; religious liberty; public welfare; the environment; and prohibiting discrimination.

III. Eligibility

A. Eligible Applicants: IRC § 45D specifies certain eligibility requirements that each Applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC Allocation authority.

1. CDE certification: For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) The Applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program Allocation Application; or (b) the Applicant submits an application for certification as a CDE through the AMIS by the deadline in Table 1. Applicants for CDE certification may obtain information regarding CDE certification and the CDE Certification Application process in AMIS on the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx.*

The CDFI Fund will not provide NMTC Allocation authority to Applicants that are not certified as CDEs or to entities that are certified as Subsidiary CDEs.

If an Applicant that has already been certified as a CDE wishes to change its designated CDE Service Area for this Allocation Round, then it must submit its request for such change to the CDFI Fund, and the request must be received by the CDFI Fund by the deadline listed in Table 1. A request to change a CDE's Service Area will need to include the revised service area designation and updated accountability information that demonstrates that the CDE has the required representation from Low-Income Communities in the revised CDE Service Area.

2. Repayment or Refinancing of QEI with QLICI Proceeds: An applicant must commit that it will not permit the use of the proceeds of QEIs to make QLICIs in Qualified Active Low-Income Community Businesses (QALICBs) where QLICI proceeds are used, in whole or in part, to repay or refinance a debt or equity provider whose capital was used to fund the QEI, or are used to repay or refinance any Affiliate of such a debt or equity provider, except where: (i) The QLICI proceeds are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such reasonable expenditures were incurred no more than 24 months prior to the QLICI closing date; or (ii) no more than five percent of the total QLICI proceeds from the QEI are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB. Refinance includes transferring cash or property, directly or indirectly, to the debt or equity provider or an Affiliate of the debt or equity provider.

3. Do Not Pay: The CDFI Fund will contact the Do Not Pay Business Center to ensure that an Applicant, its Controlling Entity, and any Affiliate(s) are not prohibited from receiving federal funds. An Applicant, its Controlling Entity, and any Affiliate(s) reported by the Do Not Pay Business Center as having a pending or delinquent debt to the Federal government will be required to demonstrate that it has resolved such pending or delinquent debt. Applicants that fail to demonstrate resolution of such pending or delinquent debt to the Federal government will be found ineligible to receive an allocation.

4. Prior award recipients or Allocatees: Applicants must be aware that success in a prior application or allocation round of any of the CDFI Fund's programs is not indicative of success under this NOAA. For purposes of this NOAA, and eligibility determinations, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC Allocation Application materials, or any entity otherwise identified as an Affiliate by the Applicant in its NMTC Allocation Application materials.

Prior award recipients of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

(a) Prior Allocatees and Qualified Equity Investment (QEI) issuance and Qualified Low Income Community Investment (QLICI) requirements: CDEs that are Allocatees under the CY 2014 to the CY 2019 rounds must finalize at least the percentage of QEIs noted in Table 2 for each NMTC Allocation round and use at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of their Allocation Agreements to make QLICIs by January 15, 2021. CDEs that are Allocatees under the CY 2014 to the CY 2019 allocation rounds and CDEs that are Allocatees designated as Rural CDEs in their CY 2018 and/or CY 2019 Allocation Agreements must meet the following thresholds.

TABLE 2—QEI ISSUANCE AND QLICI REQUIREMENTS

Prior round allocation	Finalized QEI requirement (%)	Rural CDE finalized QEI requirement (%)	QLICIs
CY 2014	100	100	As stated in Section 3.2(j) of the applicable Allocation Agreement.
CY 2015–16	90	90	
CY 2017	80	80	
CY2018	50	30	
CY2019	25	0	

In addition to the requirements noted above, a CDE is not eligible to receive a NMTC Allocation pursuant to this NOAA if an Affiliate of the Applicant is a prior Allocatee and has not met the minimum QEIs issuance and QLICI thresholds as set forth in Table 2 for Allocatees in the prior allocation rounds of the NMTC Program.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as ''finalized'' those QEIs that have been properly reported in AMIS Allocation Tracking System for Qualified Equity Investments (AQEIs) by the deadline in Table 1. Allocatees and their Subsidiary Allocatees, if any, are advised to access AMIS to record each QEI that they issue to an investor in exchange for cash. Furthermore, the CDFI Fund will only recognize QLICIs that have been certified in AMIS by the deadline in Table 1. Instructions on recording a QEI and QLICIs in AMIS is available at *https://www.cdfifund.gov/Pages/amisreporting.aspx.* Applicants may be required, upon notification from the CDFI Fund, to submit documentation to substantiate the required QEI issuance and QLICI thresholds.

Any prior Allocatee that requires any action by the CDFI Fund (*i.e.,* certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit a CDE Certification Application for Subsidiary CDEs by the deadline in Table 1 and Allocation Agreement amendment requests by the deadline in Table 1, in order to guarantee that the CDFI Fund completes all necessary approvals prior to January 15, 2021. Applicants for Subsidiary CDE certification may obtain information regarding CDE certification and the CDE Certification Application process in AMIS on the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx.*

(b) Pending determination of noncompliance or default: If an Applicant is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has demonstrated noncompliance with a previous assistance or award agreement or default under a previous Allocation Agreement; and (ii) the entity has been given a timeframe to cure the noncompliance or default, the CDFI Fund will consider the Applicant's application under this NOAA during the time period given for the entity to cure the noncompliance or default, and until such time as the CDFI Fund makes a final determination that the entity is in noncompliance or default. Further, if an Affiliate of the Applicant is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has demonstrated noncompliance with a previous assistance or award agreement or default under a previous Allocation Agreement; and (ii) the entity has been given a timeframe to cure the noncompliance or default, then the CDFI Fund will consider the Applicant's application under this NOAA during the time period given for the entity to cure the noncompliance or default, and until such time as the CDFI Fund makes a final determination that the entity is in noncompliance or default.

(c) Noncompliance or default status: The CDFI Fund will not consider an application submitted by an Applicant that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a final determination that such Applicant is noncompliant with a previously executed assistance or award agreement, or in default of a previously executed Allocation Agreement; and (ii) the CDFI Fund has provided written notification of such final determination to the Applicant; and (iii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the CY 2020 allocation award announcement. Further, the CDFI Fund will not consider an application submitted by an Applicant with an Affiliate that is a prior award recipient or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a final determination that such Affiliate is noncompliant with a previously executed assistance or award agreement, or in default of a previously executed Allocation Agreement; (ii) the CDFI Fund has provided written notification of such final determination to the Affiliate; and (iii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the CY 2020 allocation award announcement.

(d) Contacting the CDFI Fund: Accordingly, Applicants that are prior award recipients and/or Allocatees under any CDFI Fund program are advised to comply with the requirements specified in assistance, allocation and/or award agreement(s). All outstanding reports and compliance questions should be directed to the Office of Certification, Compliance Monitoring and Evaluation (CCME) through a Service Request initiated in AMIS. Requests submitted less than 30 calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance and CDE certification inquiries Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of publication of this NOAA through the ''Last date to contact CDFI Fund staff'' specified in Table 1. Inquiries received after the ''Last date to contact the CDFI Fund staff'' will be responded to after the Allocation Application deadline.

4. Failure to accurately respond to a question in the Assurances and Certifications section of the application, submit the required written explanation, or provide any updates: In its sole discretion, the CDFI Fund may deem the Applicant's application ineligible, if the CDFI Fund determines that the Applicant inaccurately responded to a question, accurately responded to a question, but failed to submit a required written explanation, or failed to notify

the CDFI Fund of any changes to the information submitted between the date of application and the date the Allocatee executes the Allocation Agreement, with respect to the Assurances and Certifications. In making this determination, the CDFI Fund will take into consideration, among other factors, the materiality of the question, the substance of any supplemental responses provided, and whether the information in the Applicant's supplemental responses would have a material adverse effect on the Applicant, its financial condition or its ability to perform under an Allocation Agreement, should the Applicant receive an allocation.

5. Entities that propose to transfer NMTCs to Subsidiary CDEs: Both for-profit and non-profit CDEs may apply for NMTC Allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit Applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) It controls one or more Subsidiary CDEs that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary CDEs. An Applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary CDE is not required to create the Subsidiary prior to submitting a NMTC Allocation Application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing.

The CDFI Fund requires a non-profit Applicant to submit a CDE Certification Application to the CDFI Fund on behalf of at least one for-profit Subsidiary within 45 days after the non-profit Applicant receives notification from the CDFI Fund of its allocation award, as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. The CDFI Fund reserves the right to rescind the award if a non-profit Applicant that does not already have a certified for-profit Subsidiary CDE fails to submit a CDE Certification Application for one or more for-profit Subsidiaries within 45 days of the date it receives notification from the CDFI Fund of its allocation award.

6. Entities that submit applications together with Affiliates; applications from common enterprises:

(a) As part of the Allocation Application review process, the CDFI Fund will evaluate whether Applicants are Affiliates, as such term is defined in the Allocation Application. If an Applicant and its Affiliate(s) wish to submit Allocation Applications, they must do so collectively, in one application; an Applicant and its Affiliate(s) may not submit separate Allocation Applications. If Affiliated entities submit multiple applications, the CDFI Fund will reject all such applications received, except for those state-owned or state-controlled governmental Affiliated entities. In the case of state-owned or state-controlled governmental entities, the CDFI Fund may accept applications submitted by different government bodies within the same state, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and/or are operated and/or managed by distinctly dissimilar personnel, including staff, board members and identified consultants. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the $100 million cap. If the CDFI Fund determines that the applications submitted by different government bodies in the same state are not distinctly dissimilar and/or operated and/or managed by distinctly dissimilar personnel, it will reject all such applications.

(b) For purposes of this NOAA, the CDFI Fund will also evaluate whether each Applicant is operated or managed as a ''common enterprise'' with another Applicant in this Allocation Round using the following indicia, among others: (i) Whether different Applicants have the same individual(s), including the Authorized Representative, staff, board members and/or consultants, involved in day-to-day management, operations and/or investment responsibilities; (ii) whether the Applicants have business strategies and/or proposed activities that are so similar or so closely related that, in fact or effect, they may be viewed as a single entity; and/or (iii) whether the applications submitted by separate Applicants contain significant narrative, textual or other similarities such that they may, in fact or effect, be viewed as substantially identical applications. In such cases, the CDFI Fund will reject all applications received from such entities.

(c) Furthermore, an Applicant that receives an NMTC Allocation in this Allocation Round (or its Subsidiary Allocatee) may not become an Affiliate of or member of a common enterprise (as defined above) with another Applicant that receives an NMTC Allocation in this Allocation Round (or its Subsidiary Allocatee) at any time after the submission of an Allocation Application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's website at *https://www.cdfifund.gov* for more details).

7. Entities created as a series of funds: An Applicant whose business structure consists of an entity with a series of funds must apply for CDE certification for each fund. If such an Applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an Applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it must submit a CDE Certification Application for the Applicant and each fund it would like to participate in the NMTC Program, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an Applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an Applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the fund is a certified CDE that is a Subsidiary of the Applicant, enjoined to the Allocation Agreement as a Subsidiary Allocatee.

8. Entities that are Bank Enterprise Award Program (BEA Program) award recipients: An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

IV. Application and Submission Information

A. Address to request application package: Applicants must submit applications electronically under this NOAA, through the CDFI Fund's AMIS.

Following the publication of this NOAA, the CDFI Fund will make the electronic Allocation Application available on its website at *https://www.cdfifund.gov.*

B. Application content requirements: Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation, except, if necessary and at the request of the CDFI Fund. Electronic applications must be submitted solely by using the format made available via AMIS. Additional information, including instructions relating to the submission of supporting information (*e.g.,* the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts), is set forth in further detail in the CY 2020 NMTC Application—AMIS Navigation Guide for this Allocation Round. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the Applicant and, if applicable, its Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829–4933 or *www.irs.gov.* Do not include any personal Social Security Numbers as part of the application.

An Applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.6 of this NOAA, an Applicant and its Affiliates must collectively submit only one Allocation Application; an Applicant and its Affiliates may not submit separate Allocation Applications except as outlined in Section III.A.6 above. Once an application is submitted, an Applicant will not be allowed to change any element of its application.

C. Form of application submission: Applicants may only submit applications under this NOAA electronically via AMIS, the CDFI Fund's Award Management Information System. Applications and required attachments sent by mail, facsimile, or email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

Electronic applications must be submitted solely by using the CDFI Fund's website and must be sent in accordance with the submission instructions provided in the CY 2020 NMTC Application—AMIS Navigation Guide for this Allocation Rounds. AMIS will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (*e.g.,* the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, and organizational charts) is set forth in further detail in the CY 2020 NMTC Application—AMIS Navigation Guide for this Allocation Round.

D. Application submission dates and times: Electronic applications must be received by the Allocation Application deadline in Table 1. Electronic applications cannot be transmitted or received after Allocation Application deadline in Table 1. In addition, Applicants must electronically submit supporting information (*e.g.,* the Controlling Entity's representative signature page, investor letters, and organizational charts). The Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, and organizational charts must be submitted on or before Application deadline in Table 1. For details, see the instructions provided in the CY 2020 NMTC Application—AMIS Navigation Guide for this Allocation Round on the CDFI Fund's website.

Applications and other required documents received after this date and time will be rejected. Please note that the document submission deadlines in this NOAA and/or the Allocation Application are strictly enforced.

E. Intergovernmental Review: Not applicable.

F. Funding Restrictions: For allowable uses of investment proceeds related to a NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published December 28, 2004 and as amended) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. Paperwork Reduction: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0016.

V. Application Review Information

A. Review and selection process: All Allocation Applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the Allocation Application. In Phase 1, two reviewers will evaluate and score the Business Strategy and Community Outcomes sections of each application. An Applicant must exceed a minimum overall aggregate base score threshold and exceed a minimum aggregate section score threshold in each scored section in order to advance from the Phase 1 to the Phase 2 part of the substantive review process. In Phase 2, the CDFI Fund will rank Applicants and determine the dollar amount of allocation authority awarded in accordance with the procedures set forth below.

B. Criteria:

1. Business Strategy (25-point maximum):

(a) When assessing an Applicant's business strategy, reviewers will consider, among other things: The Applicant's products, services and investment criteria; a pipeline of potential business loans or investments consistent with an Applicant's request for an NMTC Allocation; the prior performance of the Applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the Applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the extent to which the Applicant intends to make QLICIs in one or more businesses in which persons unrelated to the entity hold a majority equity interest; and the extent to which Applicants that otherwise have notable relationships with the QALICBs financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an Applicant will generally score well to the extent that it will deploy debt or investment capital in products or

services which are flexible or non-traditional in form and on better terms than available in the marketplace. An Applicant will also score well to the extent that, among other things: (i) It has identified a set of clearly-defined potential borrowers or investees; (ii) it has a track record of successfully deploying loans or equity investments and providing services similar to those it intends to provide with the proceeds of QEIs; (iii) its projected dollar volume of NMTC Allocation deployment is supported by its track record of deployment; (iv) in the case of an Applicant proposing to purchase loans from CDEs, the Applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities. If the Applicant (or its Affiliates) have notable relationships with QALICBs, the Applicant will generally score well if it quantifies how such relationships will create benefits (*i.e.,* cost savings, lower fees) for QALICBs, unaffiliated end-users such as tenant businesses, or residents of Low-Income Communities.

(b) Priority Points: In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five additional points to any Applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the CDFI Fund will give five additional points to any Applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an Applicant (and the Applicant's Subsidiary CDEs, if the Subsidiary Allocatee makes the QLICI) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, Applicants that meet the requirements of both priority categories can receive up to a total of ten additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an Applicant itself or by its Controlling Entity (*e.g.,* where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An Applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will include an Applicant's priority points when ranking Applicants during Phase 2 of the review process, as described below.

2. Community Outcomes (25-point maximum): In assessing the potential benefits to Low-Income Communities that may result from the Applicant's proposed investments, reviewers will consider, among other things, the degree to which the Applicant is likely to: (i) Achieve significant and measurable community development outcomes in its Low-Income Communities; (ii) invest in particularly economically distressed markets including areas identified in the Allocation Application such as Federally designated Opportunity Zones; (iii) engage with local communities regarding investments; (iv) the level of involvement of community representatives in the governing board and/or advisory board in approving investment criteria or decisions; and (v) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities.

An Applicant will generally score well under this section to the extent that, among other things: (a) It will generate clear and well supported community development outcomes; (b) it has a track record of producing quantitative and qualitative community outcomes that are similar to those projected to be achieved with an NMTC Allocation; (c) it is working in particularly economically distressed or otherwise underserved communities; (d) its activities are part of a broader community or economic development strategy; (e) it demonstrates a track record of community engagement around past investment decisions; (f) it ensures that an NMTC investment into a project or business is supported by and will be beneficial to Low-Income Persons and residents of Low-Income Communities; and (g) it is likely to engage in activities that will spur additional private capital investment.

C. Phase 2 Evaluation:

1. Application Ranking and Anomaly Reviews: Using the numeric scores from Phase 1, Applicants are ranked on the basis of each Applicant's combined scores in the Business Strategy and Community Outcomes sections of the application plus one half of the priority points. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the two application scored sections) varies significantly from the other reviewer's total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the evaluation and numeric scoring of an additional third reviewer to determine whether the anomalous score should be replaced with the score of the additional third reviewer.

2. Late Reports: In the case of an Applicant or any Affiliates that have previously received an award or NMTC Allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points up to five points from the Applicant's final rank score for the Applicant's (or its Affiliate's) failure to meet any of the reporting deadlines set forth in any assistance, award or Allocation Agreement(s), if the reporting deadlines occurred during the period from October 29, 2019 to the application deadline in this NOAA.

3. Prior Year Allocatees: In the case of Applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) Effectively utilized its prior-year NMTC Allocations in a manner generally consistent with the representations made in the relevant Allocation Application (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served); (b) issued QEIs and closed QLICIs in a timely manner; and (c) substantiated a need for additional NMTC Allocation authority. The CDFI Fund will use this information in determining whether to reject or reduce the allocation award amount of its NMTC Allocation Application.

4. Management Capacity: In assessing an Applicant's management capacity, CDFI Fund will consider, among other things, the current and planned roles, as well as qualifications of the Applicant's (and Controlling Entity's, if applicable): Principals; board members; management team; and other essential staff or contractors, with specific focus on: Experience in providing loans; equity investments or financial counseling and other services, including activities similar to those described in the Applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax credit programs; and the Applicant's (or its Controlling Entity's) financial health. CDFI Fund evaluators will also consider the extent to which an Applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the Applicant's projected income and

expenses related to managing an NMTC Allocation.

An Applicant will be generally evaluated more favorably under this section to the extent that its management team or other essential personnel have experience in: (a) Providing loans, equity investments or financial counseling and other services in Low-Income Communities, particularly those likely to be served by the Applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An Applicant will also be evaluated favorably to the extent it demonstrates strong financial health and a high likelihood of remaining a going-concern; it clearly explains levels of income and expenses; has policies and systems in place to ensure portfolio quality, ongoing compliance with NMTC Program requirements; and, if it is a Federally-insured financial institution, has its most recent Community Reinvestment Act (CRA) rating as ''outstanding.''

5. Capitalization Strategy: When assessing an Applicant's capitalization strategy, CDFI Fund will consider, among other things: The key personnel of the Applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; the extent to which the Applicant has secured investments or commitments to invest in NMTC (if applicable), or indications of investor interest commensurate with its requested amount of NMTC Allocations, or, if a prior Allocatee, the track record of the Applicant or its Affiliates in raising Qualified Equity Investments in the past five years; the Applicant's strategy for identifying additional investors, if necessary, including the Applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; and the extent to which the Applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations.

An Applicant will be evaluated more favorably under this section to the extent that: (a) It or its Controlling Entity demonstrate a track record of raising investment capital; (b) it has secured investor commitments, or has a reasonable strategy for obtaining such commitments, or, if it or its Affiliates is a prior Allocatee with a track record in the past five years of raising Qualified Equity Investments and; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; and (d) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an Applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the Applicant or from Affiliated entities, said Applicant will be evaluated more favorably to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

6. Contacting Applicants: As a part of the substantive review process, the CDFI Fund may permit the NMTC Allocation recommendation panel member(s) to request information from Applicants for the sole purpose of obtaining, clarifying or confirming application information or omission of information. In no event shall such contact be construed to permit an Applicant to change any element of its application. At this point in the process, an Applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process. If the Applicant (or the Controlling Entity or any Affiliate) has previously been awarded an NMTC Allocation, the CDFI Fund may also request information on the use of those NMTC Allocations, to the extent that this information has not already been reported to the CDFI Fund. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an Applicant's file, including, without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of NMTC Allocation authority available.

7. Award Decisions: The CDFI Fund will award allocations in descending order of the final rank score, subject to Applicants meeting all other eligibility requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process.

D. Allocations serving non-metropolitan counties: As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), the CDFI Fund shall ensure that Non-Metropolitan counties receive a proportional allocation of QEIs under the NMTC Program. The CDFI Fund will endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. In addition, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of Applicants in the highly qualified pool that are Rural CDEs. A Rural CDE is one that has a track record of at least three years of direct financing experience, has dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties over the past five years, and has committed that at least 50 percent of its NMTC financing dollars with this NMTC Allocation will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts. Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with ''preliminary'' awards, in descending order of final rank score, until the available allocation authority is fulfilled. Once these ''preliminary'' award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the ''preliminary'' awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of Applicants in the highly qualified pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the highly qualified pool, in descending order of their final rank score, until the appropriate percentage balance is achieved. In order to accommodate the additional Rural CDEs in the Allocatee pool within the available NMTC Allocation limitations, a formula reduction may be applied as uniformly as possible to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the ''minimum'' percentage of QLICIs that Allocatees indicated in their

applications would be targeted to Non-Metropolitan areas to the total NMTC Allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the NMTC Allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the ''maximum'' percentage of QLICIs that the Allocatees indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties by requiring any or all Allocatees to commit up to the maximum percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, the CDFI Fund may add additional highly qualified Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a formula reduction will be applied as uniformly as possible, to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

E. Right of rejection: The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of a prior CDFI Fund award recipient, if such Applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of a prior CDFI Fund Allocatee, if such Applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of any Applicant, if an Affiliate of the Applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject or reduce the allocation award amount of any NMTC Allocation Application in the case of a prior Allocatee, if such Applicant has failed to use its prior NMTC Allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served) set forth in the Allocation Application(s) related to such prior NMTC Allocation(s) or such Applicant has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D. The CDFI Fund also reserves the right to reject or reduce the allocation award amount of any NMTC Allocation Application in the case of an Affiliate of the Applicant that is a prior Allocatee and has failed to use its prior NMTC Allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served) set forth in the Allocation Application(s) related to such prior NMTC Allocation(s) or has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D.

The CDFI Fund reserves the right to reject an NMTC Allocation Application if information (including, but not limited to, administrative errors or omission of information) comes to the attention of the CDFI Fund that adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, adversely affects the CDFI Fund's prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an Applicant, its Affiliate(s), or the Controlling Entity, if such fraud or mismanagement by the Affiliate(s) or Controlling Entity would hinder the Applicant's ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

The CDFI Fund reserves the right to reject any NMTC Allocation Application if additional information is obtained that, after further due diligence and in the discretion of the CDFI Fund, would hinder the Applicant's ability to effectively perform under the Allocation Agreement. In the case of Applicants (or the Controlling Entity, or Affiliates) that are regulated or receive oversight by the Federal government or a state agency (or comparable entity), the CDFI Fund may request additional information from the Applicant regarding Assurances and Certifications or other information about the ability of the Applicant to effectively perform under the Allocation Agreement. The NMTC Allocation recommendation panel or selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal banking and other regulatory agencies. In the case of Applicants (or Affiliates of Applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration. An Applicant that is or is affiliated with an insured depository institution will not be awarded an NMTC Allocation if it has a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not award an NMTC Allocation to an Applicant that is an insured depository institution or is an Affiliate of an insured depository institution, if during the time period beginning with the application deadline and ending with the execution of the CY 2020 Allocation Agreement; the Applicant received any of the following:

1. CRA assessment rating of below ''Satisfactory'' on its most recent examination;

2. A going concern opinion on its most recent audit; or

3. A Prompt Corrective Action directive from its regulator.

The CDFI Fund reserves the right to conduct additional due diligence on all Applicants, as determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the Applicant, Affiliates, the Applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each. This includes the right to consult with the IRS if the Applicant (or the Controlling Entity, or Affiliates) has previously been awarded an NMTC Allocation.

F. Allocation Announcement: Each Applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility, or substantive issues. Eligible Applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to receive feedback on their

applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

The CDFI Fund reserves the right, in its sole discretion, to rescind an allocation made under this NOAA, should an Allocatee be identified as ineligible due to pending or delinquent debt to the Federal government in the Do Not Pay database.

There is no right to appeal the CDFI Fund's NMTC Allocation decisions. The CDFI Fund's NMTC Allocation decisions are final.

VI. Award Administration Information

A. Allocation Award Compliance

1. Failure to meet reporting requirements: If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation, or award agreement(s) as of the date the CDFI Fund provides notification of an NMTC Allocation award or thereafter, the CDFI Fund reserves the right, in its sole discretion, to reject the application, delay entering into an Allocation Agreement, and/or impose limitations on an Allocatee's ability to issue QEIs to investors until said prior award recipient or Allocatee is current on the reporting requirements in the previously executed assistance, allocation, or award agreement(s). Please note that the automated systems the CDFI Fund uses for receipt of reports submitted electronically typically acknowledges only a report's receipt; such an acknowledgment does not warrant that the report received was complete and therefore met reporting requirements.

2. Pending determination of noncompliance or default: If an Allocatee is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has demonstrated noncompliance with a previous assistance or award agreement or a default under an Allocation Agreement; and (ii) the entity has been given a timeframe to cure the noncompliance or default the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, during the time period given for the entity to cure the noncompliance or default and until such time as the CDFI Fund makes a final determination that the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. Further, if an Affiliate of an Allocatee is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has demonstrated noncompliance under a previous assistance or award agreement or default under a previous Allocation Agreement; and (ii) the entity has been given a timeframe to cure the noncompliance or default, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, during the time period given for the entity to cure the noncompliance or default and until such time as the CDFI Fund makes a final determination that the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. If the prior award recipient or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance or default, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. Determination of noncompliance or default status: If prior to entering into an Allocation Agreement through this NOAA, the CDFI Fund has made a final determination that an Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program is (i) noncompliant with a previously executed assistance or award agreement, or is in default of a previously executed Allocation Agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the noncompliance or default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2020 Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the NMTC Allocation made under this NOAA.

Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a final determination that an Affiliate of an Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund programs is in noncompliance of a previously executed assistance or award agreement or in default of a previously executed Allocation Agreement(s); (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2020 Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the NMTC Allocation made under this NOAA.

B. Allocation Agreement: Each Allocatee (including their Subsidiary Allocatees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (*e.g.,* loans to or equity investments in QALICBs, loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) commitments to specific ''innovative activities'' discussed by the Allocatee in its Allocation Application; (v) the time period by which the Allocatee may obtain QEIs from investors; (vi) reporting requirements for the Allocatee; and (vii) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an Allocatee represented in its NMTC Allocation Application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the Allocatee hold a majority equity interest, the Allocation Agreement will contain a covenant to that effect. In addition to entering into an Allocation Agreement, each Allocatee must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an Allocatee (and its Subsidiary Allocatees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates;

(ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary Allocatees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary Allocatees. The CDFI Fund reserves the right, in its sole discretion, to rescind its NMTC Allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, including an approved legal opinion, within the deadlines set by the CDFI Fund.

C. Fees: The CDFI Fund reserves the right, in accordance with applicable Federal law and, if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

D. Reporting: The CDFI Fund will collect information, on at least an annual basis from all Allocatees and/or CDEs that are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will require the Allocatee to retain information as the CDFI Fund deems necessary or desirable and shall provide such information to the CDFI Fund when requested to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC Allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the Allocation Application Mondays through Fridays, between the hours of 9:00 a.m. and 5:00 p.m. ET through the last day to contact the CDFI Fund. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after the last day to contact the CDFI Fund. The CDFI Fund will respond to such phone calls or emails after the Allocation Application deadline in Table 1. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.* The CDFI Fund will post on its website responses to questions of general applicability regarding the NMTC Program.

A. Information technology support: Technical support can be obtained by calling (202) 653–0422 or by submitting a Service Request in AMIS. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's website should call (202) 653–0422 for assistance. These are not toll free numbers.

B. Programmatic support: If you have any questions about the programmatic requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS; or by telephone at (202) 653–0421. These are not toll free numbers.

C. Administrative support: If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS, or by telephone at (202) 653–0421. These are not toll free numbers.

D. IRS support: For questions regarding the tax aspects of the NMTC Program, contact Jian Grant and James Holmes, Office of the Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 317–4137, or by facsimile at (855) 591–7867. These are not toll free numbers. Applicants wishing for a formal ruling request should see IRS Internal Revenue Bulletin 2018–1, issued January 2, 2018.

VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct one or more information sessions that will be produced in Washington, DC and broadcast over the internet via webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2020–20931 Filed 9–22–20; 8:45 am]

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Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2020; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 20–105; FCC 20–120; FRS 17050]

Assessment and Collection of Regulatory Fees for Fiscal Year 2020

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its Schedule of Regulatory Fees to recover an amount of $339,000,000 that Congress has required the Commission to collect for fiscal year 2020. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively.

DATES: Effective September 23, 2020. To avoid penalties and interest, regulatory fees should be paid by the due date of September 25, 2020.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 20–120, MD Docket No. 20–105, adopted and released on August 31, 2020. The full text of this document is available for public inspection by downloading the text from the Commission's website at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0906/FCC-17-111A1.pdf.*

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Report and Order.* The FRFA is located at the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

2. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

3. In this Report and Order, we adopt a schedule to collect the $339,000,000 in congressionally required regulatory fees for fiscal year (FY) 2020. The regulatory fees for all payors are due in September 2020. In future rulemaking, we will seek comment on regulatory fee subcategories for FY 2021, for nongeostationary orbit (NGSO) satellites, as proposed by several commenters.

4. Earlier this year, in the *2020 Regulatory Fee Reform Order* (85 FR 37364 (June 22, 2020)), we adopted several reforms regarding non-U.S. licensed space stations with U.S. market access grants, the apportionment of full time equivalents (FTEs) within the International Bureau for international bearer circuits and satellite issues, the apportionment of FTEs within the Satellite Division of the International Bureau for geostationary orbit (GSO) and NGSO space station regulatory fee, and we adopted a limitation on population counts for certain very high frequency (VHF) television broadcast stations. In the accompanying *FY 2020 Notice of Proposed Rulemaking (NPRM)* (85 FR 32256 (May 28, 2020)), we sought comment on a proposed fee schedule and also on certain issues for International Bureau and Media Bureau regulatees. Specifically, we sought comment on a schedule of proposed regulatory fees as well as certain issues: Adjusting the allocation of international bearer circuit (IBC) fees between submarine cable and terrestrial and satellite IBCs from 87.6%–12.4% to 95%–5%; combining the submarine cable regulatory fee tiers with new tiers for terrestrial and satellite IBCs in a unified tier structure; basing full-power broadcast television fees on the population covered by the station's contour; and continuing to increase the direct broadcast satellite (DBS) regulatory fees by 12 cents, to 72 cents, per subscriber, per year. In addition, we sought comment on economic effects due to the COVID–19 pandemic on regulatory fee payors.

II. Report and Order

A. Allocating FTEs

5. In the *FY 2020 NPRM,* the Commission proposed that non-auctions funded FTEs will be classified as direct only if in one of the four core bureaus, *i.e.,* in the Wireline Competition Bureau, the Wireless Telecommunications Bureau, the Media Bureau, or the International Bureau. The indirect FTEs are from the following bureaus and offices: Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairman and Commissioners' offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Workplace Diversity, Office of Media Relations, Office of Economics and Analytics, and Office of Administrative Law Judges, along with some employees in the Wireline Competition Bureau and the International Bureau that the Commission previously classified as indirect.

6. We will continue to apportion regulatory fees across fee categories based on the number of direct FTEs in each core bureau and the proportionate number of indirect FTEs and to take into account factors that are reasonably related to the payor's benefits. In sum, there were 311 direct FTEs for FY 2020, distributed among the core bureaus as follows: International Bureau (28), Wireless Telecommunications Bureau (73), Wireline Competition Bureau (94), and the Media Bureau (116). This results in 9.00% of the FTE allocation for International Bureau regulatees; 23.47% of the FTE allocation for Wireless Telecommunications Bureau regulatees; 30.23% of the FTE allocation for Wireline Competition Bureau regulatees; and 37.30% of FTE allocation for Media Bureau regulatees. There are 911 indirect FTEs that are allocated proportionally to the 311 direct FTEs: Enforcement Bureau (181), Consumer and Governmental Affairs Bureau (113), Public Safety and Homeland Security Bureau (89), part of the International Bureau (56), part of the Wireline Competition Bureau (38), Chairman and Commissioners' offices (23), Office of the Managing Director (132), Office of General Counsel (70), Office of the Inspector General (45), Office of Communications Business Opportunities (8), Office of Engineering and Technology (72), Office of Legislative Affairs (8), Office of Workforce Diversity (6), Office of Media

Relations (14), Office of Economics and Analytics (53), and Office of Administrative Law Judges (3). Allocating these indirect FTEs based on the direct FTE allocations yields an additional 82.0 FTEs attributable to International Bureau regulatees, 213.8 FTEs attributable to Wireless Telecommunications Bureau regulatees, 275.4 FTEs attributable to Wireline Competition Bureau regulatees, and 339.8 FTEs attributable to Media Bureau regulatees.

7. As in prior years, broadcasters have taken issue with the Commission's practice of allocating costs associated with indirect FTEs in proportion to each core bureau's direct FTEs. Broadcasters suggest that the methodology should instead consider whether the functions of specific indirect FTEs benefit specific regulatory fee payors. We affirm the findings in our FY 2019 regulatory fee proceeding, where we explained in detail our existing methodology for assessing fees, noted the changes in the statute, and sought comment on what changes to our regulatory fee methodology, if any, were necessary to implement the RAY BAUM'S Act amendments to our regulatory fee authority. After review of the comments received, we determined in the *FY 2019 Report and Order* (84 FR 50890 (Sept. 26, 2019)) that because the new section 9 closely aligned to how the Commission assessed and collected fees under the prior section 9, we would hew closely to the existing methodology, expressly rejecting any suggestion that the Commission should abandon the step in our process whereby we designate FTEs as either direct or indirect and allocate indirect FTEs in proportion to the direct FTEs in each of the core bureaus. The National Association of Broadcasters (NAB) also asserts after evaluating the FTE allocations within the bureaus and offices, the Commission failed to also consider other factors that reasonably related to the benefits provided to the payors, particularly the radio industry. But as noted above, it has been the Commission's longstanding methodology to use direct FTEs as a measure of the benefits provided, and the Commission engages in a fresh review of the FTE allocations each year as part of its annual proceeding.

B. Direct Broadcast Satellite Regulatory Fees

8. Direct broadcast satellite service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. The two DBS providers, AT&T and DISH Network, are multichannel video programming distributors (MVPDs). In 2015, the Commission adopted an initial regulatory fee for DBS, as a subcategory in the cable television and internet protocol (IPTV) category. The Commission then phased in the new Media Bureau-based regulatory fee for DBS, starting at 12 cents per subscriber per year. For FY 2020, the Commission proposed to increase the fee to 72 cents per subscriber, per year.

9. AT&T and DISH—the two DBS operators in the United States—claim that the proposed fee increase of 12 cents is not ''because the nation's two DBS providers have caused the Commission to incur significant full-time equivalent ('FTE') employee costs commensurate with this calculation, but rather because the Commission apparently desires regulatory fee parity between cable operators and DBS providers.'' We reject AT&T's and DISH's claim that we should not adopt a fee increase and that such an increase would result in shifting cable-caused costs to DBS providers. The Media Bureau relies on a common pool of FTEs to carry out its oversight of MVPDs and other video distribution providers. A significant number of Media Bureau FTEs work on MVPD issues such as market modifications, must-carry and retransmission consent disputes, program carriage complaints, media modernization efforts, and proposed transactions, that affect all MVPDs. A significant number of Media Bureau FTEs work on MVPD issues such as market modifications, must-carry and retransmission consent disputes, program carriage complaints, media modernization efforts, and proposed transactions, that affect all MVPDs. Therefore, we adopt the proposal in the *FY 2020 NPRM* to continue to phase in the DBS regulatory fee by 12 cents, to 72 cents per subscriber, per year. This increase will result in a regulatory fee of 89 cents per subscriber, per year, for cable television/IPTV, and bring DBS closer to parity with cable television/IPTV.

10. Finally, the DBS providers contend that the Commission should use an MVPD subscriber snapshot closer in time to the regulatory fee order release date due to declining subscriber counts. The use of a more recent customer data, such as in June or July, would preclude the Commission from retrieving, reviewing, and using the information while drafting the Notice of Proposed Rulemaking and seeking comment on proposed fees, a critical step in the annual regulatory fee process. Accordingly, we decline to adjust the date of the MVPD subscriber count snapshot.

C. Television Broadcaster Regulatory Fees

11. Historically, regulatory fees for full-power television stations were based on the Nielsen Designated Market Area (DMA) groupings 1–10, 11–25, 26–50, 51–100, and remaining markets (DMAs 101–210. In the *FY 2018 Report and Order* (83 FR 47079 (Sept. 18, 2018)), we adopted a new methodology that would transition from a blended fee based methodology to one that is based entirely on population. Accordingly, we now adopt FY 2020 fees for full-power broadcast television stations based on the population covered by a full-power broadcast television station's contour. Table 9 lists this population data for each licensee and the population-based fee (population multiplied by $.007837) for each full-power broadcast television station, including each satellite station.

12. In the *FY 2020 NPRM,* we also proposed to adjust the fees of Puerto Rico broadcasters in two discrete ways. *First,* we proposed to account for the objectively measurable reduction in population by reducing the population counts used in TVStudy by 16.9%, which reflects the decline between the last census in 2010 and the current population estimate. *Second,* we proposed to limit the market served by a primary television stations and commonly owned satellite broadcast stations in Puerto Rico to no more than 3.10 million people, the latest population estimate. Under this scenario, the fee for television broadcasters and commonly owned satellites, using the proposed population fee of $.007837, would not exceed $24,300. Accordingly, we adopt these adjustments and the proposed regulatory fees for these television broadcasters.

13. We disagree with arguments attempting to relitigate our treatment of VHF stations. Several commenters contend that ultra high frequency (UHF) stations should pay a higher fee than VHF stations because VHF stations have to overcome additional background interference that is prevalent in large cities. In the *2020 Regulatory Fee Reform Order,* we declined to categorically lower regulatory fees for VHF stations to account for signal limitations, and concluded that there is nothing inherent in VHF transmission that creates signal deficiencies but that environmental noise issues can affect reception in certain areas and situations. As such, we grant VHF stations that operate at higher power levels to overcome interference an assessed

amount at power levels authorized by our rules.

D. Radio Broadcaster Regulatory Fees

14. The *FY 2020 NPRM* proposed the same methodology for assessing radio broadcasters as in prior years. This methodology involves first identifying the FTEs doing work directly benefitting regulatees. The total collection target is then allocated across all regulatory fee categories based on the number of total FTEs. Each regulatee within a fee category then pays its proportionate share based on an objective measure of size (*e.g.,* revenues or number of subscribers). The methodology, as is the case with many regulatees, uses both population and type of license as a metric for benefit afforded the payor.

15. Use of this methodology results in net increases in the amount of regulatory fees assessed to radio broadcast categories compared to FY 2019. In continuing to review our unit numbers, however, we discovered a computational error and correct it here by increasing the number of units used in the calculation from 9,636 to 9,831 which results in lower fees than proposed in the *FY 2020 NPRM.* Below is a chart showing the regulatory fees by category of radio broadcaster for FY 2020 adjusted to account for the correction:

TABLE 1—FY 2020 RADIO STATION REGULATORY FEES

FY 2020 radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<=25,000	$975	$700	$610	$670	$1,075	$1,225
25,001–75,000	1,475	1,050	915	1,000	1,625	1,850
75,001–150,000	2,200	1,575	1,375	1,500	2,425	2,750
150,001–500,000	3,300	2,375	2,050	2,275	3,625	4,150
500,001–1,200,000	4,925	3,550	3,075	3,400	5,450	6,200
1,200,001–3,000,000	7,400	5,325	4,625	5,100	8,175	9,300
3,000,001–6,000,000	11,100	7,975	6,950	7,625	12,250	13,950
>6,000,000	16,675	11,975	10,425	11,450	18,375	20,925

16. Radio broadcasters argue that any increases to their regulatory fees for FY 2020 are unreasonable because the total amount appropriated to the Commission for FY 2020 did not increase from FY 2019, and the number of FTEs in the Media Bureau increased by only one from FY 2019. Accordingly, they claim that the regulatory fees for radio broadcast categories for FY 2020 should be frozen at their FY 2019 levels. The radio broadcasters' arguments, however, reflect an incomplete understanding of the methodology that the Commission has used for years. As described above and in the *FY 2020 NPRM,* the long-standing methodology for assessing regulatory fees involves multiple factors besides the amount of appropriation to be recovered and the number of direct FTEs. Specifically, two factors affecting calculation of radio broadcasters' fees changed significantly between FY 2019 and FY 2020, and resulted in the increase in regulatory fees for radio broadcasters. *First,* the Media Bureau's allocation percentage increased from 35.9% in FY 2019 to 37.3% in FY 2020. (Mathematically, the year-to-year change in the absolute number of direct FTEs in a core bureau does not by itself determine the share of overall regulatory fees that should be borne by regulatees of that bureau, because the bureau's allocation percentage also depends on the overall number of Commission direct FTEs, which changes year to year.) Furthermore, because indirect FTEs are proportionately allocated by a bureau's share of direct FTEs, this increase in the percentage of direct FTEs also resulted in an increase in the amount of indirect FTEs being allocated to Media Bureau fee categories. This then resulted in an increase in the overall fees for radio broadcasters as a group. *Second,* the total number of radio broadcasters (projected fee-paying units) unexpectedly dropped by 180 from FY 2019 to FY 2020. The net effect of these two changes resulted in increased regulatory fees for individual radio broadcaster fee paying units for FY 2020.

17. We disagree with the radio broadcasters that we should ignore our long-standing methodology in order to freeze regulatory fees for (and thus benefit) radio broadcasters at the expense of other regulatees (such as television broadcasters). Because the Commission is statutorily obligated to recover the amount of its appropriation through regulatory fees, these fees are a zero-sum situation. Thus, if the Commission freezes one set of regulatees' fees, it would need to increase another set of regulatees' fees to make up for any resulting shortfall in a way that is inconsistent with the longstanding methodology described in the *FY 2020 NPRM.* We accordingly decline to freeze the radio broadcaster regulatory fees at their FY 2019 levels and instead adopt the radio broadcaster fees as adjusted in this Report and Order.

E. Toll Free Numbering Regulatory Fees

18. Toll free numbers allow callers to reach the called party without being charged for the call. With toll free calls, the charge for the call is paid by the called party (the toll free subscriber) instead. ATL Communications, a RespOrg, filed comments to the Commission's proposed regulatory fees for fiscal year 2020. In its comments, ATL does not address the issues that are the subject of this proceeding, but instead raises specific questions related to international toll free calls involving Canada, tracking fee exemptions, control and ownership of toll free numbers, and the consequences for failure to pay assessed regulatory fees. Upon review, we find no convincing evidence in ATL's comments that warrants a change to the regulatory fee obligation, as it applies to toll free numbers.

F. Market Access Space Station Regulatory Fees

19. In the *2020 Regulatory Fee Reform Order,* we concluded that non-U.S. licensed space stations granted access to the market in the United States (market access grants) will be included in the FY 2020 GSO and NGSO space station regulatory fees. In the *FY 2020 NPRM,* we accordingly proposed to collect regulatory fees from most, but not all, non-U.S. licensed space stations granted U.S. market access, and we follow through and adopt such fees here.

20. We disagree with the two commenters that assert that we do not have such authority. We will not repeat the lengthy analysis from the *2020 Regulatory Fee Reform Order* here, but will summarize the issues.

21. The core of our analysis is that we impose fees on regulatees that reflect the ''benefits provided to the payor of the fee by the Commission's activities.'' Holders of market access grants clearly benefit from the activities of the Commission—and nothing in the language of the Act suggests Congress intended to preclude such entities from the ambit of regulatory fees. We conclude that the legislative history of the Act posed no bar to assessing regulatory fees on non-U.S. licensed space stations granted U.S. market access via the formal process first adopted by the Commission in 1997.

22. The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation. The Commission's methodology for assessing regulatory fees must ''reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' Our order amply explained how requests for market access have become a significant portion of the applications processed by the Commission and that holders of market access grants regularly participate in Commission activities. Thus, such entities derive many benefits from the activities of Commission staff. Additionally, commenters argue that non-U.S.-licensed space stations are not subject to regulatory fees because they provide ''nonregulated services.'' The argument ignores the fact that operators of non-U.S.-licensed space stations granted market access are subject to the same service rules and operating conditions as those that apply to U.S. licensed operators.

23. We also disagree with arguments that the proposed regulatory fees for non-U.S licensed space stations with U.S. market access grants are too high because we set the same regulatory fee for U.S. licensed and non-U.S. licensed space stations. As we discussed in the *FY 2020 NPRM,* the number of space stations seeking U.S. market access has continued to increase each year; in 2019 there were more market access petitions than U.S. space station applications. In addition, as we noted, foreign-licensed space station operators participate actively in Commission rulemaking proceedings and benefit from Commission monitoring and enforcement activities. We concluded that the Commission devotes significant resources to processing the growing number of market access petitions of non-U.S. licensed satellites and that those foreign licensed satellites with U.S. market access benefit from much of the same oversight and regulation by the Commission as the U.S. licensed satellites. For that reason, we concluded that assessing the same regulatory fees on non-U.S. licensed space stations with market access grants as we assess on U.S. licensed space stations will better reflect the benefits received by these operators through the Commission's adjudicatory, enforcement, regulatory, and international coordination activities and will promote regulatory parity and fairness among space station operators by evenly distributing the regulatory cost recovery.

24. Finally, the non-U.S. licensed satellite operators argue that they should not pay the same amount of indirect costs as the U.S. licensed satellite operators because they receive fewer benefits from the Commission. They contend that the Commission's regulatory activity at international organizations is designed to promote and protect the interests of U.S. satellite operators and that the indirect FTEs across the agency largely support U.S. telecommunications policy.

25. U.S. licensed satellite operators disagree and observe that the non-U.S. licensed satellite operators receive the same or more benefits from the Commission as do U.S. licensed satellite operators. They observe that in another proceeding the non-U.S. licensed operators in the C-Band Alliance have stressed the practical similarities between the market access grants and U.S. licensed space stations. SpaceX contends that the foreign licensed operators overlook the tremendous benefit of access to the U.S market and that the Commission's regulatory activities maximize the value of the market access.

26. We find that the non-U.S. licensed operators are ignoring the fact that the Commission devotes significant resources to processing the growing number of market access petitions of foreign licensed satellites and that the foreign licensed satellite operators benefit from much of the same oversight and regulation by the Commission as the U.S. licensed satellites, such as processing a petition for market access requires evaluation of the same legal and technical information as required of U.S. licensed applicants. The operators of non-U.S. licensed space stations also benefit from the Commission's oversight efforts regarding all space and earth station operations in the U.S. market, since enforcement of Commission rules and policies in connection with all operators provides a fair and safe environment for all participants in the U.S. marketplace. Thus, the significant benefits to non-U.S. licensed satellites with U.S. market access support including them in the GSO and NGSO regulatory fee categories for U.S. licensed space stations.

27. To the extent some commenters argue that foreign licensed space stations do not benefit from Commission regulatory activity after the space station is operational, and that compliance with market access conditions are pre-operational assessments that occur before the licensee is subject to any regulatory fees, we disagree. Both U.S. licensed space stations and non-U.S. licensed space stations often make changes to their operations after they have been brought into service, through modification applications or petitions. Ongoing U.S. licensed and non-U.S. licensed space station operations are subject to, and benefit from, the rulemaking and other regulatory activities described above during the entire service period of the space station. In addition, we do not agree that the relevant processing costs incurred should only be assessed in the country where the space station is licensed, and that assessing fees in the United States for the same processing costs would be duplicative. Moreover, the Commission's substantial regulatory efforts for satellite services benefit non-U.S. licensed space station operators with market access and it would be inequitable to continue charging only U.S. licensees for these benefits to foreign operators.

28. Commenters also argue that we should exempt or adopt a reduced fee for non-U.S. licensed GSO satellites in certain circumstances. We adopt one of these proposals and reject the others. Eutelsat argues that U.S. licensed earth stations onboard vessels (ESVs) operating outside U.S. territorial waters and communicating with foreign licensed satellites should not be subject to regulatory fees.

29. Eutelsat argues that U.S. licensed earth stations onboard vessels (ESVs) operating outside U.S. territorial waters and communicating with foreign licensed satellites should not be subject to regulatory fees. These operations are similar, in regulatory treatment, to those of earth stations aboard aircraft (ESAAs) operating outside the United States and communicating with non-U.S. licensed space stations. We agree that the same

rationale also applies here. Accordingly, non-U.S. licensed space stations that are listed as a point of communication on ESV licenses are exempt from the regulatory fee obligations if the ESV license clearly limits U.S. licensed ESV terminals' access to these non-U.S. licensed space stations to situations in which these terminals are in foreign territories and/or international waters and the license does not otherwise allow the non-U.S. licensed space station access to the U.S. market.

30. Two commenters propose fee exemptions for certain non-U.S. licensed satellite systems based on the theory that they are not actually providing services in the United States. Astranis proposes that foreign licensed satellites accessing U.S. gateway/feeder link earth stations should be exempt from regulatory fees, because these satellites are not providing commercial services to the U.S. market but are just obtaining services from the U.S.-based earth stations. Astranis argues, the provision of gateway or feeder link services to foreign satellites is a benefit to the earth station operators. AWS proposes that non-U.S. licensed NGSO systems that downlink traffic to U.S. licensed earth stations, solely for immediate transit outside the United States and not intended for U.S. customers, should be exempt from regulatory fees. We disagree with both proposals. Unlike the limited exemptions adopted for operations exclusively outside the United States or for TT&C operations that are directed to the safe and effective operation of the satellite in orbit, the proposed exceptions are for services provided in the United States and involve data operations unrelated to the safe and effective satellite operations in orbit. These data services could involve significant data exchange traffic in the United States. Feeder link earth stations are located in the United States and carry data to and from various users. Further, the direction of the data flow is irrelevant in the context of regulatory fees. We therefore reject both proposals.

31. Two commenters propose exemptions or reduced fees based on coverage area. Astranis proposes that we adopt a tiered fee structure based on the U.S. population with the satellite's coverage area, so that the non-U.S. licensed satellite regulatory fee can more directly relate to the costs incurred by the Commission and benefits received by the U.S. and foreign licensed payors. SES proposes that foreign licensed satellites whose U.S. coverage is limited to one or more territories in the Pacific Ocean (Guam, American Samoa, Midway Island, Wake Island, and the Northern Mariana Islands) be exempt from regulatory fees because of the distance from mainland United States and the few number of potential customers located on these islands. Astranis contends that similar considerations apply to other remote and underserved areas, such as Alaska, Hawaii, and U.S. Caribbean territories. It argues an exception for these areas would allow satellite operators to better meet the Commission's goal of affordable, high-speed internet access in those underserved areas, and therefore should be exempt from regulatory fees for satellites with a service area outside the contiguous United States comprising less than one percent of the U.S. population. Telesat disagrees with this proposal to exempt non-U.S. licensed satellites from regulatory fees because these factors would apply equally to U.S. licensed satellites and also to other geographic areas. Telesat suggests that if a foreign or U.S. licensed operator contends that under certain facts it would be inappropriate to pay regulatory fees, they should request a waiver. We agree with Telesat and reject the argument for exemptions or reduced fees based on the U.S. geographic areas served by the space station. Commenters have not shown that providing service to a remote area would reduce the International Bureau's costs or affect the benefits to the regulatee.

G. Non-Geostationary Orbit Space Station Regulatory Fees

32. In the *2020 Regulatory Fee Reform Order* we decided to allocate 80% of space station fees to GSO space stations and 20% of space stations fees to NGSO space stations based upon the number of applications processed, the rulemakings, and the number of FTEs working on oversight for each category of operators. In response to the proposed GSO and NGSO regulatory fees in the *FY 2020 NRPM,* commenters assert that we should adopt separate fee categories for distinct types of NGSO systems, argue we should phase in the NGSO fee increase and not increase by more than 7.5% per year, and question the accuracy of our list of non-U.S. licensed space stations granted market access that would be subject to regulatory fees. We find that there is not sufficient evidence in the record to establish different fees for NGSO systems at this time and will seek comment on the issue in future rulemaking. We decline to phase in the NGSO fee increase as inconsistent with section 9 of the Act and adopt the proposed fees, adjusted to take into account changes to the number of assessible satellites. We agree, however, with the suggestion to publish a list of the space stations and systems in operation that would be subject to regulatory fees and attach such list in Table 8.

33. We disagree with commenters that object to the proposed fees for NGSO systems as too high for certain NGSOs and contend that the Commission should adopt separate fee categories for distinct types of NGSO systems, that the Commission should apportion the FTEs based on different types of NGSOs, or that we have not established that the actual benefits provided to NGSO payors are equal. That NGSO systems may differ in size or other characteristics does not preclude grouping them in the same fee category. The Commission groups similar services for regulatory fee purposes, regardless of the varying regulatory obligations of each entity and without calculating how many FTEs are devoted to each individual regulation, because activity levels and participation in specific proceedings may change from year to year, such as when interconnected Voice over internet Protocol (VoIP) providers were added to the interstate telecommunications service providers (ITSP) category. We did not propose differential treatment of NGSOs in the *FY 2020 NPRM,* and we do not see compelling reasons to deviate from our traditional assessment methods based on the record before us now.

34. Some contend that given the broad range of NGSO networks serving or planning to serve the United States market, the Commission should adopt a multi-tiered approach based on total number of satellites deployed and total transmit bandwidth. SpaceX contends that these commenters have not shown any meaningful tie between the number of satellites in an NGSO system and the use of Commission resources. We agree that there is not sufficient evidence in the record to establish different fees for sized NGSO systems. Accordingly, we will seek further comment in future rulemaking.

35. We disagree with commenters who argue that the proposed increase in NGSO regulatory fees requires us to phase in the fee increase over time, and not increase by more than 7.5% per year. SpaceX argues that the significant increase in fees for NGSO systems justify a 7.5% cap. We disagree. A cap for one fee category would result in an increase in the other fee categories. We are required under section 9 of the Act to adopt fees that ''reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably

related to the benefits provided to the payor of the fee by the Commission's activities.'' And given the large amount of work the Commission has done on NGSO systems over the past year, we find the benefits of Commission oversight for such systems substantial. For these reasons, we decline to adopt a phased in approach or a cap in regulatory fees.

36. Finally, commenters raise issues with the accuracy of our list of non-U.S. licensed space stations granted market access that would be subject to regulatory fees. Eutelsat contends that the Commission erroneously included Eutelsat 172B as both U.S. and foreign licensed and it should be removed from the foreign licensed list. Commenters propose that the Commission identify the U.S. licensed and foreign licensed GSO and NGSO space stations that will be subject to regulatory fees to enable operators to review the list for accuracy. Telesat disagrees and suggests that any errors can be resolved by discussions with individual operators. We agree with the suggestion to publish list the space stations and systems in operation that would be subject to regulatory fees. We have attached the list of U.S. licensed operators and foreign licensed operators with U.S. market access in Table 8 and any party identifying an error should advise Commission staff by contacting the Financial Operations Help Desk at 877–480–3201, Option 6.

H. International Bearer Circuit Regulatory Fees

37. In the *FY 2020 NPRM,* we sought comment on the allocation of IBC fees and adopting new tiers for the fees. As discussed below, we find that capacity is an appropriate measure by which to assess IBC fees. We also find that the allocation between submarine cables and terrestrial and satellite circuits should be changed to reflect the changing distribution of international capacity as more and larger submarine cables are put into service. Hence, we do not adopt a unified tier structure at this time but will continue to assess fees based on active terrestrial and satellite circuits and on lit capacity of submarine cables. We do, however, adjust the tiers for submarine cables.

38. IBC regulatory fees reflect the work performed by the International Bureau, primarily the Telecommunications and Analysis Division and the Office of the Bureau Chief, for the benefit of all U.S. international telecommunications service providers, and our submarine cable licensees. International telecommunications service is provided over terrestrial, satellite, and submarine cable facilities. In the *2020 Regulatory Reform Order,* we concluded, based on a review by the International Bureau, that eight FTEs should be allocated to IBCs for regulatory fee purposes, and 20 FTEs to the satellite category.

39. IBC fees consist of (1) active terrestrial and satellite circuits, and (2) lit submarine cable systems. Prior to 2009, IBC fees were collected based on the number of 64 kbps circuits for each of the three types of facilities used to provide international service. In 2009, the Commission changed the methodology for assessing IBC fees from basing the fee on 64 kbps circuits for all types of IBCs to assessing fees for submarine cable operators on a per cable landing license basis, with higher fees for larger capacity submarine cable systems and lower fees for smaller capacity submarine cable systems. The Commission concluded that this methodology served the public interest and was competitively neutral because it included both common carriers and non-common carriers. Under this bifurcated approach, based on the 2009 Consensus Proposal from the submarine cable operators, 87.6% of IBC fees were assessed to submarine cable systems and 12.4% to terrestrial and satellite facilities based on relative capacity at the time. The Commission adopted a five-tier structure for assessing fees on submarine cables systems, and a per gigabits per second (Gbps) assessment for terrestrial and satellite facilities based on active circuits. The fee assessment on submarine cables cover the costs for regulatory activity concerning submarine cables as well as the services provided over the submarine cables.

1. Using Capacity To Assess IBC Regulatory Fees

40. We start by reaffirming that IBC regulatees with higher capacity receive a greater benefit from the Commission's work and should be assessed accordingly. The Commission has historically used capacity to assess IBCs. The Commission continued to assess IBC fees on active 64 kbps circuits until 2009 when it adopted a new fee structure that assesses fees on international submarine cable systems, but that new structure still used capacity of the cable system for determining the fees with smaller submarine cable systems paying a lower fee than larger systems. Terrestrial and satellite facilities continued to have IBC fees assessed on a 64 kbps circuit capacity basis until 2018 when the Commission began assessing the fees based on Gbps.

41. This year the International Bureau undertook a review of its work, staffing, and distribution of responsibilities benefiting its fee payors, between the Telecommunications and Analysis Division and the Satellite Division and based on this review, we allocated eight FTEs to the international bearer circuit category. The Commission found that almost all of the IBC work benefits all international telecommunications service providers no matter what facilities those services are provided over—submarine cable systems, terrestrial facilities, or satellites. Submarine cable licensees benefit from work that includes among others, maintaining the licensing database, enforcing benchmarks, coordination with other U.S. Government agencies, including coordinating with other U.S. agencies' undersea activities to protect submarine cables, protecting U.S. customers and consumers from anticompetitive actions by foreign carriers, licensing international section 214 authorizations and submarine cables including review of transactions, and representing U.S. interests at bilateral and multilateral negotiations and at international organizations. The Commission's activities make it possible for submarine cable operators and other IBC providers to provide service to their customers. Those operators of facilities with larger capacity to carry more data derive a greater benefit from the Commission's work in this regard.

42. Several commenters retread well-trodden ground to object to this assessment, but we find yet again that they have not provided a rationale to alter our assessment of fees within the IBC category based on capacity. Contrary to the Submarine Cable Coalition's argument that basing fees on capacity is unlawful, use of capacity is a fundamental premise of how the Commission assesses regulatory fees. Licensees with larger facilities benefit more from the Commission's work and thus should pay a larger proportion of the Commission's costs—just as we have found that licensees with more customers (like MVPD subscribers or commercial mobile radio service (CMRS) subscribers) or with more revenues (such as ITSPs) benefit more from the Commission's activities. CenturyLink states that to the extent that those FTEs working on issues that benefit IBC regulates as a whole, it is reasonable to use capacity to allocate the fees among the regulatees. We agree (as the Commission has long held) that capacity is a reasonable basis in the context of IBCs to assess those costs

among the regulatees that benefit from that work.

43. We also once again reject assertions that only the work of two FTEs benefits submarine cable operators. The North American Submarine Cable Association (NASCA) points to a 2014 order, arguing that the Commission found that only two FTEs work to the benefit of submarine cable operators and that should be reflected in the regulatory fees. Although the Commission explained in 2015 that this was a misstatement, NASCA continues to cite this as part of its arguments. The Submarine Cable Coalition similarly argues that the Commission provides limited benefits to submarine cable operators. CenturyLink disagrees and argues the commenters have not provided a sound explanation why using capacity is unreasonable or prohibited by section 9. And indeed, we reject NASCA's and the Submarine Cable Coalition's arguments that submarine cables benefit only from a limited number of FTEs as suggested six years ago—we conducted an FTE reevaluation prior to setting the FY 2020 IBC fees and the benefits attributable submarine cables are reflected in the proposed fees.

44. We also reject the argument that submarine cables do not benefit from the Commission's IBC work because most submarine cables operate on a non-common carriage (or private carriage) basis. Since 2009, the Commission has assessed regulatory fees on both common carrier and non-common carrier submarine cable systems, as requested by industry in the Consensus Plan, and because both benefit from the landing licenses issued by the Commission. We also note that terrestrial and satellite IBC fees are assessed on both common carrier and non-common carrier circuits. Further, while a submarine cable may operate on a non-common carrier basis, the traffic carried on the submarine cable includes common carrier traffic.

2. Division of IBC Regulatory Fees

45. In the *FY 2020 NPRM,* we proposed to change the allocation of the IBC fees between submarine cable systems and terrestrial and satellite facilities. Since 2009, 87.6% of IBC fees have been allocated to submarine cables and 12.4% to terrestrial and satellite facilities. This allocation was adopted in the *Submarine Cable Order* (74 FR 22104 (May 12, 2009)) and was based on the relative circuits in 2008.

46. Based on the minimum capacity for the 2019 rate tiers for regulatory fees paid for submarine cables in FY 2019 (meaning a licensee that paid the rate for a capacity of 4000 Gbps or higher on the submarine cable is presumed to have a capacity of 4000 Gbps), the Commission calculated that the ratio between submarine cable and terrestrial and satellite IBCs is at least 90.8% submarine cable and no more than 9.8% terrestrial and satellite circuits. This calculation, assuming lit capacity at the minimum capacity in the tier, substantially undercounts actual lit capacity in these submarine cables therefore an upward adjustment of 5% more closely approximates actual lit capacity numbers. The Commission concluded that a ratio attributing 95% to submarine cables and 5% to terrestrial and satellite circuits would be more reasonable than the historic ratio and sought comment on this reallocation.

47. CenturyLink supports the proposal to allocate 95% of IBC fees to submarine cable and 5% to satellite and terrestrial IBCs. SIA argues that the 95%/5% allocation continues to underestimate submarine cable capacity and that the allocation should be closer to 98.3%/1.7%, but it does not provide any support for this proposed allocation. Based on the record, we are adopting our proposed reallocation between submarine cable and satellite and terrestrial IBCs, as we proposed in the *FY 2020 NPRM.*

3. IBC Regulatory Fee Tiers

48. In the *FY 2020 NPRM,* we also sought comment on combining the submarine cable and terrestrial and satellite IBC categories and assessing IBC fees based on a unified fee structure. Under this proposal, terrestrial and satellite IBC owners would pay regulatory fees based on the number of active international circuits using the rates set out in the proposed tiers. Submarine cable operators would continue to pay regulatory fees for each international submarine cable system based on the lit capacity of the cable system using the same tiers. Commenters generally oppose the proposal to unify the two categories and we decline to adopt it here, arguing that a combined tier structure would increase IBC fees paid by satellite operators, but obtain no additional benefit from this tiered structure. SES and SIA further contend that we should eliminate regulatory fees for satellite IBCs. They observe that we previously rejected tiers for terrestrial and satellite IBCs due to the wide range of numbers of circuits among carriers and that tiers could result in large increases in fees, and so satellite IBCs should continue to pay a fee on the basis of a Gbps circuit.

49. Based on the comments, we decline to adopt the proposed unified tier structure at this time. Instead, we adopt the alternative proposal in the *FY 2020 NPRM* to maintain our current fee structure and will continue to assess regulatory fees for terrestrial and satellite IBCs on a per Gbps circuit basis. We will use a six tier structure for fees assessed to submarine cable systems, using lit capacity of the cable system.

50. We reject, again, using a flat rate for submarine cables. NASCA contends that the industry proposal that the Commission adopted in 2009 was meant to replace capacity-based fees with a flat fee per submarine cable system. The Commission has previously addressed this issue and rejected adopting a flat fee for submarine cables. Contrary to NASCA's assertion, the Commission never indicated in the *Submarine Cable Order* that it intended to move to a flat fee and indeed it specifically stated that over time the categories of small and large systems will change as systems grow in capacity. The Commission updated the tiers in 2018 to reflect the increasing capacity of submarine cable systems and we do so again this year.

4. Submarine Cable IBC Regulatory Fees

51. Since FY 2009, when the Commission established a new methodology for assessing submarine cable fees, the level of capacity for submarine cable systems has increased by leaps and bounds. The Commission has expanded the different tiers to accommodate for this rapid expansion in growth. However, the basic methodology for calculating submarine cable fees has not changed since FY 2009. Submarine cable fees are still calculated on the basis of ''1'' unit, ''.5'' units, ''.25'' units and so forth. In the *FY 2020 NPRM,* the proposed basic unit of fees remained at ''1'' unit, and this ''1'' unit is at the fee level of $295,000 and at the tier threshold of 3,500–6,500 Gbps. The tier threshold at 2,000–3,500 Gbps constituted ''.5'' units ($147,500), while the tier level above 6,500 Gbps ($590,000), as proposed, was double the ''1'' unit fee and constituted ''2'' units. The basic methodology for calculating submarine cable fees had not changed, just expanded to include a level above ''1'' unit due to increases in capacity.

52. Some commenters argue that calculations underlying this year's regulatory fees are incorrect. CenturyLink states that the proposed fees have calculation errors and will result in an overcollection of over $11 million. NASCA contends that the wrong denominator was used in the calculation of submarine cable fee—the

number of licensed cables, 53, should be the denominator instead of the number of payment units. This erroneous calculation would lead to an overcollection of $14,128,475. And AT&T does its own calculations to come up with its own tier structure.

53. Submarine cable system operators are not currently required to disclose the lit capacity of their submarine cable systems to the Commission. In the absence of such data, the Commission must rely on estimates based on the submarine cable system fee payor's past certifications that accompany their regulatory fee payments. Both NASCA and the Submarine Cable Coalition have filed data about the current lit capacity of their members' submarine cable systems to provide a factual basis for us to conclude a higher number of fee payors will be paying at the highest level. Taking the new information into account and applying the new top tier ratio, we adopt the following submarine cable systems regulatory fee tiers:

TABLE 2—FY 2020 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2019)	Fee ratio	FY 2020 regulatory fees
Less than 50 Gbps	.0625 Units	$13,450
50 Gbps or greater, but less than 250 Gbps	.125 Units	26,875
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	53,750
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	107,500
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	215,000
6,500 Gbps or greater	2.0 Units	430,000

54. With these adjustments, the new fees for submarine cable systems are: $430,000 for capacities of 6,500 Gbps or greater; $215,000 for capacities of 3,500 Gbps or greater but less than 6,500 Gbps; $107,500 for capacities of 1,500 Gbps or greater but less than 3,500 Gbps; $53,750 for capacities of 250 Gbps or greater but less than 1,500 Gbps, $26,875 for capacities of 50 Gbps or greater but less than 250 Gbps; and $13,450 for capacities less than 50 Gbps.

55. These changes reduce the highest tier from $590,000 to $430,000 using a ''2'' unit fee, the ''1'' unit fee from $295,000 to $215,000, the ''.5'' unit fee from $147,500 to $107,500, the ''.25'' unit fee from $73,750 to $53,750, the ''.125'' unit fee from $36,875 to $26,875, and the ''.0625'' unit fee from $18,450 to $13,450.

56. The Submarine Cable Coalition contends that the high regulatory fees impact the competitiveness and desirability of United States as a landing location, and so operators may elect to obtain licenses in Canada or Mexico, even if a significant portion of the traffic on the cable is intended for or would originate from destinations in the United States. While we recognize that regulatory fees are a factor for the industry to consider in their business plans, we cannot adjust regulatory fees based on fees assessed in other countries. Instead, we are required by section 9 of the Act to base regulatory fees on the FTEs in the bureaus and offices in the Commission ''adjusted to take into account factors that are reasonably related to the benefits provided.''

57. Finally, NASCA argues that the Commission should charge fees based on active capacity rather than lit capacity. NASCA notes that ''active'' capacity is revenue-generating while ''lit'' capacity is merely electronically enabled capacity and does not equate to revenue-generating capacity. NASCA and the Submarine Cable Coalition assert that failure to define and distinguish between ''active'' and ''lit'' capacity in the *FY 2020 NPRM* creates ambiguities that could lead to gamesmanship if regulated parties seek to lower regulatory fees owed.

58. We clarify that submarine cables will be assessed IBC fees based on ''lit'' capacity. As the Commission explained in the *FY 2019 Report and Order,* the submarine cable IBCs are based on the lit capacity of the submarine cable as of December 31 of the previous year, in this case December 31, 2019. The Commission uses lit capacity ''because that is the amount of capacity that submarine cable operators are able to provide services over and the regulatory fee is in part recovering the costs related to the regulation and oversight of such services.'' We believe that the term ''lit capacity'' is a well-established industry terminology and its use will less likely to create any ambiguity that may lead to gamesmanship.

I. Flexibility for Regulatory Payors Given the COVID–19 Pandemic

59. In the *FY 2020 NPRM,* we sought comment on providing relief to regulatees whose businesses have suffered financial harm due to the pandemic. At the outset, we noted the statutory constraints the Commission faces in providing relief from fee payment—its obligations to collect $339,000,000 in FY 2020 regulatory fees and to fairly and proportionately allocate the burden of those fees among regulatees, and the Commission's inability to exempt regulatees other than those expressly exempt in the statute. We asked commenters to suggest relief measures the Commission might implement within the statutory limitations we described.

60. All of the comments we received in response to our request support the provision of regulatory relief to regulatees financially harmed by the pandemic. The majority of comments were filed by or on behalf of broadcasters and of those, all oppose increasing FY 2020 broadcaster regulatory fees, urging the Commission to either suspend the fee increases or waive altogether FY 2020 broadcaster regulatory fees. Commenters also suggest the Commission waive the 25% penalty for broadcasters that do not pay their fee by September 30, 2020 and extend the September 30 deadline.

61. Several commenters suggest that the Commission relax its standard for waiver requests, including to permit consideration of waiver requests by parties that are red lighted for other debt owed to the Commission and to allow waiver of the portion of fees attributable to any month a station has been off the air. Others suggest simplifying the waiver filing process to be more ''easily navigable and inexpensive'' for small broadcasters in particular, including to permit a single letter filing for both waiver and deferral requests. Another commenter urges the Commission to modify the financial documentation it considers germane to demonstrate financial hardship, to account for current circumstances in which previously financially healthy broadcasters are experiencing significant financial distress owing to the pandemic.

62. Several commenters support the expanded use of the Commission's

installment payment program for regulatees unable to pay their fees by the September 30 deadline, urging the Commission to offer installment payment terms of 6–12 months and beyond, deferred lump sum payments, nominal interest rates, no down payment, and simplify the documents required to obtain an installment payment agreement.

63. We take several steps to address the concerns raised by commenters. *First,* we simplify our filing requirements for waiver, reduction, and deferral requests for FY 2020 fees to ensure that regulatees needing assistance are not precluded from requesting it on procedural grounds. Section 1.1166(a) of the Commission's rules requires requests for waiver, reduction, or deferral to be filed as separate pleadings and states that ''any such request that is not filed as a separate pleading will not be considered by the Commission.'' Given the ongoing pandemic, we temporarily waive this rule to permit parties seeking fee waiver and deferral for financial hardship reasons to make a single request for both waiver and deferral. We also temporarily waive § 1.1166(a) of our rules to direct requests to be submitted electronically to the following Commission email address: *2020regfeerelief@fcc.gov.*

64. *Second,* we temporarily waive our rules to the extent necessary so that parties seeking extended payment terms for FY 2020 regulatory fees may do so by submitting an email request to the same email address: *2020regfeerelief@fcc.gov.* Installment payment requests may be combined with waiver, reduction, and deferral requests in a single request.

65. *Third,* we exercise our discretion under section 3717(a) of the Debt Collection Improvement Act of 1996, as amended, to reduce the interest rate the Commission charges on installments payments to a nominal rate—and we exercise our discretion to forego the down payment normally required before granting an installment payment request.

66. *Fourth,* we recognize that demonstrating financial hardship caused by the pandemic may require different financial documentation than the documentation the Commission has traditionally accepted. While the burden of proving financial hardship remains with the party requesting it, we direct the Managing Director to work with individual regulatees that have filed requests if additional documents are needed to render a decision on the request.

67. *Fifth,* we waive in part our red light rule to allow debtors that are experiencing financial hardship to nonetheless request relief with respect to their regulatory fees. Under the red light rule, the Commission will not act on any application or request for relief if the requesting party has not paid a debt owed to the Commission. In light of the pandemic, we find that temporary waiver of the red light rule, at the Managing Director's discretion, to permit regulatees that are experiencing financial difficulties and that owe other debt to the Commission to request waivers, reductions, deferrals, and installment payment terms for FY 2020 fees is appropriate. However, those regulatees for whom the red light is waived will be required to resolve all delinquent debt by paying it in full, entering into an installment agreement to repay the debt, and/or if applicable, curing all payment and other defaults under existing installment agreements.

68. We direct the Managing Director to release one or more public notices describing in more detail the enhanced relief we will provide to regulatees whose businesses have been affected by the pandemic, with filing and other instructions as needed.

69. Finally, we address the suggestions that would contravene the statute or our precedent. We cannot waive FY 2020 fees or the 25% late payment penalty for any group of broadcasters because doing so would effectively exempt the group, when the statute does not permit such an exemption, but instead requires a case-by-case determination in order to waive a fee or penalty. Similarly, we cannot reduce broadcaster fees except on a case-by-case basis. And we cannot suspend the FY 2020 fee increases solely because advertising revenues have dropped. We cannot extend the September 30 deadline, as September 30 marks the end of our fiscal year and we are required to collect FY 2020 fees by fiscal year end.

70. We also cannot relax the standard we employ for fee waiver, reduction, or deferral based on financial hardship grounds. Section 9A of the Act permits the Commission to waive a regulatory fee, penalty or interest for good cause if the waiver is in the public interest. Where financial hardship is the asserted basis for a waiver, the Commission has consistently interpreted that to require a showing that the requesting party ''lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.'' We believe the existing waiver standard together with the measures described above will work as designed, to provide fee relief to those regulatees most in need. Regulatees whose businesses have been hurt by the pandemic, but not to the extent required to receive a waiver, reduction, or deferral, will be eligible to pay their FY 2020 fees in installments if they show that they cannot pay the fee in lump sum, but can do so with extended payment terms.

III. Procedural Matters

71. Included below are procedural items as well as our current payment and collection methods. We include these payments and collection procedures here as a useful way of reminding regulatory fee payors and the public about these aspects of the annual regulatory fee collection process.

72. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual,* Volume I, Part 5, Chapter 7000, Section 7045—*Limitations on Card Collection Transactions,* the highest amount that can be charged on a credit card for transactions with Federal agencies is $24,999.99. Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in Fee Filer. Further details will be provided regarding payment methods and procedures at the time of FY 2019 regulatory fee collection in Fact Sheets, *https://www.fcc.gov/regfees.*

73. Payment Methods. Pursuant to an Office of Management and Budget (OMB) directive, the Commission is moving towards a paperless environment, extending to disbursement and collection of select Federal Government payments and receipts. In 2015, the Commission stopped accepting checks (including cashier's checks and money orders) and the accompanying hardcopy forms (*e.g.,* Forms 159, 159–B, 159–E, 159–W) for the payment of regulatory fees. During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov,* ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at *http://transition.fcc.gov/fees/regfees.html.* The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of

payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Federal Communications Commission at (202) 418–2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html.*

74. *Standard Fee Calculations and Payment Dates.*—The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2019 for AM/FM radio stations, VHF/UHF broadcast television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2019.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2019. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in § 52.103 of the Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2019.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2019. The number of subscribers, units, or telephone numbers on December 31, 2019 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees:* The first eight regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2020.
- *Multichannel Video Programming Distributor Services (cable television operators, cable television relay service (CARS) licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2019. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2019. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2019. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services (Earth Stations, Space Stations (GSO and NGSO):* Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were U.S licensed, or non-U.S. licensed but granted U.S. market access, and operational on or before October 1, 2019. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date.
  - For FY 2020 only, non-U.S. licensed GSO and NGSO satellites that have been granted market access to the U.S. through a Petition for Declaratory Ruling (PDR) or through an earth station had until July 15, 2020 to relinquish their market access status to avoid having to pay FY 2020 regulatory fees in September 2020. If non-U.S. licensed GSO and NGSO satellites, either through a PDR or an earth station, still have market access *after* July 15, 2020, regulatory fees will be assessed, and payment will be required by the due date of FY 2020 regulatory fees.
- *International Services* (*Submarine Cable Systems, Terrestrial and Satellite Services*): Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2019. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2019 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such terrestrial and satellite active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2019. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2019, responsibility for payment rests with the holder of the permit or license as of the fee due date.

75. *Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments.* The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''). This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer) along with the carrier's Operating Company Numbers (OCNs).

76. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation. The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the

number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

77. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2019), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

78. *Enforcement.* Regulatory fee payments must be paid by their due date. Section 9A(c)(1) of the Act requires the Commission to impose a late payment penalty of 25% of unpaid regulatory fee debt, to be assessed on the first day following the deadline for payment of the fees. Section 9A(c)(2) of the Act requires the Commission to assess interest at the rate set forth in 31 U.S.C. 3717 on all unpaid regulatory fees, including the 25% penalty, until the debt is paid in full. The RAY BAUM'S Act, however, prohibits the Commission from assessing the administrative costs of collecting delinquent regulatory fee debt. Thus, while section 9A(c) of the Act leaves intact those parts of § 1.1940 of the Commission's rules pertaining to penalty and interest charges, the Commission will no longer assess administrative costs on delinquent regulatory fee debts.

79. The Commission will pursue collection of all past due regulatory fees, including penalties and accrued interest, using collection remedies available to it under the Debt Collection Improvement Act of 1996, its implementing regulations and federal common law. These remedies include offsetting regulatory fee debt against monies owed to the debtor by the Commission, and referral of the debt to the United States Treasury for further collection efforts, including centralized offset against monies other federal agencies may owe the debtor.

80. Failure to timely pay regulatory fees, penalties or accrued interest will also subject regulatees to the Commission's ''red light'' rule, which generally requires the Commission to withhold action on and subsequently dismiss applications and other requests for benefits by any entity owing debt, including regulatory fee debt, to the Commission.

81. In addition to financial penalties, section 9(c)(3) of the Act, and § 1.1164(f) of the Commission's rules grant the Commission the authority to revoke authorizations for failure to pay regulatory fees in a timely fashion. Should a fee delinquency not be rectified in a timely manner the Commission may require the licensee to file with documented evidence within sixty (60) calendar days that full payment of all outstanding regulatory fees has been made, plus any associated penalties as calculated by the Secretary of Treasury in accordance with § 1.1164(a) of the Commission's rules, or show cause why the payment is inapplicable or should be waived or deferred. Failure to provide such evidence of payment or to show cause within the time specified may result in revocation of the station license.

82. *Effective Date.* Providing a 30-day period after **Federal Register** publication before this Report and Order becomes effective as normally required by 5 U.S.C. 553(d) will not allow sufficient time to collect the FY 2020 fees before FY 2020 ends on September 30, 2020. For this reason, pursuant to 5 U.S.C. 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and this Report and Order will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until late September, persons affected by this Report and Order will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

83. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

84. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA) the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in the back of this rulemaking.

IV. List of Tables

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

TABLE 3—CALCULATION OF FY 2020 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2020 payment units	Yrs	FY 2019 revenue estimate	Pro-Rated FY 2020 revenue requirement	Computed FY 2020 regulatory fee	Rounded FY 2020 reg. fee	Expected FY 2020 revenue
PLMRS (Exclusive Use)	750	10	112,500	187,500	25.00	25	187,500
PLMRS (Shared use)	11,700	10	1,240,000	1,170,000	10.00	10	1,170,000
Microwave	12,600	10	2,500,000	3,150,000	25.00	25	3,150,000
Marine (Ship)	7,100	10	1,065,000	1,065,000	15.00	15	1,065,000
Aviation (Aircraft)	5,500	10	450,000	550,000	10.00	10	550,000
Marine (Coast)	90	10	24,000	36,000	40.00	40	36,000
Aviation (Ground)	1,100	10	220,000	220,000	20.00	20	220,000
AM Class A [1]	63	1	285,200	296,501	4,706	4,700	296,100
AM Class B [1]	1,458	1	3,541,950	3,678,692	2,523	2,525	3,681,450
AM Class C [1]	819	1	1,266,000	1,317,039	1,608	1,600	1,310,400
AM Class D [1]	1,372	1	4,200,800	4,351,447	3,172	3,175	4,356,100
FM Classes A, B1 & C3 [1]	2,973	1	8,823,375	9,156,345	3,080	3,075	9,141,975

TABLE 3—CALCULATION OF FY 2020 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Fee category	FY 2020 payment units	Yrs	FY 2019 revenue estimate	Pro-Rated FY 2020 revenue requirement	Computed FY 2020 regulatory fee	Rounded FY 2020 reg. fee	Expected FY 2020 revenue
FM Classes B, C, C0, C1 & C2 [1]	3,146	1	10,833,000	11,216,626	3,565	3,575	11,246,950
AM Construction Permits [2]	6	1	1,785	3,660	610	610	3,660
FM Construction Permits [2]	60	1	67,000	64,500	1,075	1,075	64,500
Digital Television [5] (including Satellite TV)	3.25 billion population	1	24,294,675	25,473,855	.00783665	.007837	25,473,855
Digital TV Construction Permits [2]	3	1	13,350	14,850	4,950	4,950	14,850
LPTV/Translators/Boosters/Class A TV	5,340	1	1,621,500	1,684,648	315.5	315	1,682,100
CARS Stations	160	1	202,125	208,683	1,304	1,300	208,000
Cable TV Systems, including IPTV	55,500,000	1	49,020,000	49,207,472	.887	.89	49,395,000
Direct Broadcast Satellite (DBS)	27,800,000	1	18,000,000	20,117,050	.724	.72	20,116,000
Interstate Telecommunication Service Providers	$30,700,000,000	1	102,708,000	98,504,384	0.003209	0.00321	98,547,000
Toll Free Numbers	33,000,000	1	3,960,000	3,975,316	0.1205	0.12	3,960,000
CMRS Mobile Services (Cellular/Public Mobile)	425,000,000	1	79,990,000	72,127,369	0.1697	0.17	72,250,000
CMRS Messaging Services	1,900,000	1	152,000	152,000	0.0800	0.080	152,000
BRS/ [3]	1,280	1	869,400	716,800	560	560	716,800
LMDS	340	1	96,600	190,400	560	560	190,400
Per Gbps circuit Int'l Bearer Circuits	10,700	1	900,240	436,293	40.8	41	438,700
Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common)							
Submarine Cable Providers (See chart at bottom of Appendix C) [4]	38.5625	1	6,363,741	8,280,414	214,727	214,725	8,280,333
Earth Stations	3,000	1	1,402,500	1,678,050	559	560	1,680,000
Space Stations (Geostationary)	164	1	15,643,250	16,092,194	98,123.1	98,125	16,092,500
Space Stations (Non-Geostationary)	18	1	1,084,125	4,023,049	223,503	223,500	4,023,000
****** Total Estimated Revenue to be Collected			340,929,616	338,686,759			338,940,733
****** Total Revenue Requirement			339,000,000	339,000,000			339,000,000
Difference			1,929,616	(313,241)			(59,267)

Notes on Table 3

[1] The fee amounts listed in the column entitled ''Rounded New FY 2020 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2020 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 4.

[2] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[3] The MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 69 FR 72020 (Dec. 10, 2004) and 69 FR 72048 (Dec. 10, 2004), 19 FCC Rcd 14165, 14169, para. 6 (2004).

[4] The chart at the end of Table 4 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (Aug. 26, 2008) and 73 FR 50285 (Aug. 26, 2008), 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 74 FR 22104 (May 12, 2009), 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Table 3 is a weighted average of the various fee payers in the chart at the end of Table 4.

[5] The actual digital television regulatory fees to be paid by call sign are identified in Table 8.

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

TABLE 4—FY 2020 REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17.

TABLE 4—FY 2020 REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $s)
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	560.
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	560.
AM Radio Construction Permits	610.
FM Radio Construction Permits	1,075.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	$.007837, See Appendix G for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees*.
Digital TV Construction Permits	4,950.
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	315.
CARS (47 CFR part 78)	1,300.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.89.
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.72.
Interstate Telecommunication Service Providers (per revenue dollar)	.00321.
Toll Free (per toll free subscriber) (47 CFR 52.101(f) of the rules)	.12.
Earth Stations (47 CFR part 25)	560.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	98,125.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	223,500.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	41.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2020 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<=25,000	$975	$700	$610	$670	$1,075	$1,225
25,001–75,000	1,475	1,050	915	1,000	1,625	1,850
75,001–150,000	2,200	1,575	1,375	1,500	2,425	2,750
150,001–500,000	3,300	2,375	2,050	2,275	3,625	4,150
500,001–1,200,000	4,925	3,550	3,075	3,400	5,450	6,200
1,200,001–3,000,000	7,400	5,325	4,625	5,100	8,175	9,300
3,000,001–6,000,000	11,100	7,975	6,950	7,625	12,250	13,950
>6,000,000	16,675	11,975	10,425	11,450	18,375	20,925

FY 2020 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2019)	Fee ratio	FY 2020 regulatory fees
Less than 50 Gbps	.0625 Units	$13,450
50 Gbps or greater, but less than 250 Gbps	.125 Units	26,875
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	53,750
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	107,500
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	215,000
6,500 Gbps or greater	2.0 Units	430,000

Table 5—Sources of Payment Unit Estimates for FY 2020

In order to calculate individual service fees for FY 2020, we adjusted FY 2020 payment units for each service to more accurately reflect expected FY 2020 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.* Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term ''units'' reflect licenses or permits that have been issued, but for other fee categories, the term ''units'' reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2020 estimates with actual FY 2019 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated

with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2020 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2020 payment units are based on FY 2019 actual payment units, it does not necessarily mean that our FY 2020 projection is exactly the same number as in FY 2019. We have either rounded the FY 2019 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2019 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2019 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2019 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2019 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on LMS data, adjusted for exemptions, and actual FY 2019 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2019 payment units. Based on WTB reports and actual FY 2019 payment units.
Cable Television Relay Service (CARS) Stations	Based on data from Media Bureau's COALS database and actual FY 2019 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts and actual FY 2019 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2019, the Wireline Competition Bureau projected the amount of calendar year 2019 revenue that will be reported on the 2020 FCC Form 499–A worksheets due in April 2020.
Earth Stations	Based on International Bureau licensing data and actual FY 2019 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2019 payment units.
International Bearer Circuits	Based on International Bureau reports and submissions by licensees, adjusted as necessary, and actual FY 2019 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2019 payment units.

Table 6—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 7—SATELLITE CHARTS FOR FY 2020 REGULATORY FEES

U.S.—Licensed Space Stations

Licensee	Call sign	Satellite name	Type
Astro Digital U.S., Inc	S3014	LANDMAPPER–BC	NGSO
BlackSky Global, LLC	S3032	Global 1, 2, 3, & 4	NGSO

TABLE 7—SATELLITE CHARTS FOR FY 2020 REGULATORY FEES—Continued

U.S.—Licensed Space Stations

Licensee	Call sign	Satellite name	Type
DG Consents Sub, Inc	S2129	WORLDVIEW–LEGION	NGSO
DG Consents Sub, Inc	S2348	WORLDVIEW–4	NGSO
DIRECTV Enterprises, LLC	S2922	SKY–B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2711	DIRECTV RB–1	GSO
DIRECTV Enterprises, LLC	S2869	DIRECTV T14	GSO
DIRECTV Enterprises, LLC	S2132	DIRECTV T8(K)	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8(D)	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2796	DIRECTV RB–2A	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2455	DIRECTV T7S	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO
DISH Operating L.L.C	S2694	ECHOSTAR 10	GSO
DISH Operating L.L.C	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO
EchoStar Satellite Operating Corporation	S2653	ECHOSTAR 12	GSO
EchoStar Satellite Services L.L.C	S2179	ECHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Globalstar License LLC	S2115	GLOBALSTAR	NGSO
HawkEye 360, Inc.	S3042	HAWKEYE	NGSO
Horizon-3 Satellite LLC	S2947	HORIZONS–3e	GSO
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO
Intelsat License LLC, Debtor-in-Possession	S2414	INTELSAT 10–02	GSO
Intelsat License LLC, Debtor-in-Possession	S2972	INTELSAT 37e	GSO
Intelsat License LLC, Debtor-in-Possession	S2854	NSS–7	GSO
Intelsat License LLC, Debtor-in-Possession	S2409	INELSAT 905	GSO
Intelsat License LLC, Debtor-in-Possession	S2411	INTELSAT 907	GSO
Intelsat License LLC, Debtor-in-Possession	S2405	INTELSAT 901	GSO
Intelsat License LLC, Debtor-in-Possession	S2408	INTELSAT 904	GSO
Intelsat License LLC, Debtor-in-Possession	S2804	INTELSAT 25	GSO
Intelsat License LLC, Debtor-in-Possession	S2407	INTELSAT 903	GSO
Intelsat License LLC, Debtor-in-Possession	S2959	INTELSAT 35e	GSO
Intelsat License LLC, Debtor-in-Possession	S2237	INTELSAT 11	GSO
Intelsat License LLC, Debtor-in-Possession	S2785	INTELSAT 14	GSO
Intelsat License LLC, Debtor-in-Possession	S2913	INTELSAT 29E	GSO
Intelsat License LLC, Debtor-in-Possession	S2380	INTELSAT 9	GSO
Intelsat License LLC, Debtor-in-Possession	S2831	INTELSAT 23	GSO
Intelsat License LLC, Debtor-in-Possession	S2915	INTELSAT 34	GSO
Intelsat License LLC, Debtor-in-Possession	S2863	INTELSAT 21	GSO
Intelsat License LLC, Debtor-in-Possession	S2750	INTELSAT 16	GSO
Intelsat License LLC, Debtor-in-Possession	S2715	GALAXY 17	GSO
Intelsat License LLC, Debtor-in-Possession	S2154	GALAXY 25	GSO
Intelsat License LLC, Debtor-in-Possession	S2253	GALAXY 11	GSO
Intelsat License LLC, Debtor-in-Possession	S2381	GALAXY 3C	GSO
Intelsat License LLC, Debtor-in-Possession	S2887	INTELSAT 30	GSO
Intelsat License LLC, Debtor-in-Possession	S2924	INTELSAT 31	GSO
Intelsat License LLC, Debtor-in-Possession	S2647	GALAXY 19	GSO
Intelsat License LLC, Debtor-in-Possession	S2687	GALAXY 16	GSO
Intelsat License LLC, Debtor-in-Possession	S2733	GALAXY 18	GSO
Intelsat License LLC, Debtor-in-Possession	S2385	GALAXY 14	GSO
Intelsat License LLC, Debtor-in-Possession	S2386	GALAXY 13	GSO
Intelsat License LLC, Debtor-in-Possession	S2422	GALAXY 12	GSO
Intelsat License LLC, Debtor-in-Possession	S2387	GALAXY 15	GSO
Intelsat License LLC, Debtor-in-Possession	S2704	INTELSAT 5	GSO
Intelsat License LLC, Debtor-in-Possession	S2817	INTELSAT 18	GSO
Intelsat License LLC, Debtor-in-Possession	S2960	JCSAT–RA	GSO
Intelsat License LLC, Debtor-in-Possession	S2850	INTELSAT 19	GSO
Intelsat License LLC, Debtor-in-Possession	S2368	INTELSAT 1R	GSO

TABLE 7—SATELLITE CHARTS FOR FY 2020 REGULATORY FEES—Continued

U.S.—Licensed Space Stations

Licensee	Call sign	Satellite name	Type
Intelsat License LLC, Debtor-in-Possession	S2988	TELKOM–2	GSO
Intelsat License LLC, Debtor-in-Possession	S2789	INTELSAT 15	GSO
Intelsat License LLC, Debtor-in-Possession	S2423	HORIZONS 2	GSO
Intelsat License LLC, Debtor-in-Possession	S2846	INTELSAT 22	GSO
Intelsat License LLC, Debtor-in-Possession	S2847	INTELSAT 20	GSO
Intelsat License LLC, Debtor-in-Possession	S2948	INTELSAT 36	GSO
Intelsat License LLC, Debtor-in-Possession	S2814	INTELSAT 17	GSO
Intelsat License LLC, Debtor-in-Possession	S2410	INTELSAT 906	GSO
Intelsat License LLC, Debtor-in-Possession	S2406	INTELSAT 902	GSO
Intelsat License LLC, Debtor-in-Possession	S2939	INTELSAT 33e	GSO
Intelsat License LLC, Debtor-in-Possession	S2382	INTELSAT 10	GSO
Intelsat License LLC, Debtor-in-Possession	S2751	NEW DAWN	GSO
Iridium Constellation LLC	S2110	IRIDIUM	NGSO
Leidos, Inc.	S2371	LM–RPS2	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA–1	GSO
Ligado Networks Subsidiary, LLC	AMSC–1	MSAT–2	GSO
Novavision Group, Inc	S2861	DIRECTV KU–79W	GSO
ORBCOMM License Corp	S2103	ORBCOMM	NGSO
Planet Labs, Inc	S2862	SKYSAT	NGSO
Planet Labs, Inc	S2912	PLANET LABS FLOCK	NGSO
Satellite CD Radio LLC	S2812	FM–6	GSO
SES Americom, Inc	S2415	NSS–10	GSO
SES Americom, Inc	S2162	AMC–3	GSO
SES Americom, Inc	S2347	AMC–6	GSO
SES Americom, Inc	S2134	AMC–2	GSO
SES Americom, Inc	S2826	SES–2	GSO
SES Americom, Inc	S2807	SES–1	GSO
SES Americom, Inc	S2892	SES–3	GSO
SES Americom, Inc	S2180	AMC–15	GSO
SES Americom, Inc	S2445	AMC–1	GSO
SES Americom, Inc	S2135	AMC–4	GSO
SES Americom, Inc	S2155	AMC–7	GSO
SES Americom, Inc	S2713	AMC–18	GSO
SES Americom, Inc	S2433	AMC–11	GSO
SES Americom, Inc./Alascom, Inc	S2379	AMC–8	GSO
SES Americom, Inc./EchoStar Satellite Services LLC	S2181	AMC–16	GSO
Sirius XM Radio Inc	S2710	FM–5	GSO
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
Skynet Satellite Corporation	S2462	TELSTAR 12	GSO
Space Exploration Holdings, LLC	S2983/S3018	SPACEX Ku/Ka-BAND	NGSO
Spire Global, Inc	S2946	LEMUR	NGSO
ViaSat, Inc	S2747	VIASAT–1	GSO
XM Radio LLC	S2617	XM–3	GSO
XM Radio LLC	S2786	XM–5	GSO
XM Radio LLC	S2616	XM–4	GSO

NON-U.S.—LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite common name	Satellite type
ABS Global Ltd	S2987	ABS–3A	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT–2	GSO
European Telecommunications Satellite Organization	S2596	Atlantic Bird 2	GSO
European Telecommunications Satellite Organization	S3031	EUTELSAT 133 WEST A	GSO
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO
Hispamar Satélites, S.A	S2793	AMAZONAS–2	GSO
Hispamar Satélites, S.A	S2886	AMAZONAS–3	GSO
Hispasat, S.A	S2969	HISPASAT 30W–6	GSO
Horizons-1 Satellite LLC	S2970/S3049	HORIZONS–1	GSO
Inmarsat PLC	S2780	I2F1	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
Intelsat License LLC	S2592/S2868	Galaxy 23	GSO
Intelsat License LLC	S3058	HISPASAT 143W–1	GSO
Kepler Communications Inc	S2981	KEPLER	NGSO
New Skies Satellites B.V	S2756	NSS–9	GSO
New Skies Satellites B.V	S2870	SES–6	GSO
New Skies Satellites B.V	S3048	NSS–6	GSO

NON-U.S.—LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING—Continued

Licensee	Call sign	Satellite common name	Satellite type
New Skies Satellites B.V	S2463	NSS–7	GSO
New Skies Satellites B.V	S2828	SES–4	GSO
New Skies Satellites B.V	S2950	SES–10	GSO
O3B Ltd.	S2935	O3B	NGSO
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO
SES Americom, Inc	S3037	NSS–11	GSO
SES Americom, Inc	S2964	SES–11	GSO
SES DTH do Brasil Ltda	S2974	SES–14	GSO
SES Satellites (Gibraltar) Ltd	S2951	SES–15	GSO
Spire Global, Inc	S3045	MINAS	NGSO
Star One S.A	S2677	STAR ONE C1	GSO
Star One S.A	S2678	STAR ONE C2	GSO
Star One S.A	S2845	STAR ONE C3	GSO
Telesat Brasil Capacidade de Satelites Ltda	S2821	ESTRELA DO SUL 2	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2646/S2472	ANIK F2	GSO
Telesat Canada	S2976	TELESAT Ku/Ka-BAND	NGSO
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc	S2902	VIASAT–2	GSO
WorldVu Satellites Ltd	S2963	ONEWEB	NGSO

NON-U.S.—LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

ITU Name (if available)	Common name	Call sign	GSO/NGSO
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
CAN–BSS3 and CAN–BSS	ECHOSTAR 23	SM1987	GSO
Ciel Satellite Group	Ciel–2	E050029	GSO
CIEL–6i	CIEL–6i	E140100	GSO
ECHOSTAR 23	ECHOSTAR 23	SM2975	GSO
ECHOSTAR 8 (MEX)	ECHOSTAR 8	NUS1108	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
EXACTVIEW–1	EXACTVIEW–1	SM2989	NGSO
INMARSAT 3F3	INMARSAT 3F3	E000284	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
JCSAT–2B	JCSAT–2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
MSAT–1	MSAT–1	E980179	GSO
QUETZSAT–1(MEX)	QUETZSAT–1	NUS1101	GSO
Superbird C2	Superbird C2	M334100	GSO
WILDBLUE–1	WILDBLUE–1	E040213	GSO
Yamal 300K	Yamal 300K	M174162	GSO

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
3246	KAAH–TV	955,391	879,906	$6,896
18285	KAAL	589,502	568,169	4,453
11912	KAAS–TV	220,262	219,922	1,724
56528	KABB	2,474,296	2,456,689	19,253
282	KABC–TV *	17,540,791	16,957,292	132,894
1236	KACV–TV	372,627	372,330	2,918
33261	KADN–TV	877,965	877,965	6,881
8263	KAEF–TV	138,085	122,808	962
2728	KAET	4,217,217	4,184,386	32,793
2767	KAFT	1,204,376	1,122,928	8,800
62442	KAID	711,035	702,721	5,507
4145	KAII–TV	188,810	165,396	1,296
67494	KAIL	1,967,744	1,948,341	15,269
13988	KAIT	861,149	845,812	6,629

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
40517	KAJB	383,886	383,195	3,003
65522	KAKE	803,937	799,254	6,264
804	KAKM	380,240	379,105	2,971
148	KAKW–DT	2,615,956	2,531,813	19,842
51598	KALB–TV	943,307	942,043	7,383
51241	KALO	948,683	844,503	6,618
40820	KAMC	391,526	391,502	3,068
8523	KAMR–TV	366,476	366,335	2,871
65301	KAMU–TV	346,892	342,455	2,684
2506	KAPP	319,797	283,944	2,225
3658	KARD	703,234	700,887	5,493
23079	KARE	3,924,944	3,907,483	30,623
33440	KARK–TV	1,212,038	1,196,196	9,375
37005	KARZ–TV	1,066,386	1,050,270	8,231
32311	KASA–TV	1,161,789	1,119,108	8,770
41212	KASN	1,175,627	1,159,721	9,089
7143	KASW	4,174,437	4,160,497	32,606
55049	KASY–TV	1,144,839	1,099,825	8,619
33471	KATC	1,348,897	1,348,897	10,571
13813	KATN	97,466	97,128	761
21649	KATU	2,978,043	2,845,632	22,301
33543	KATV	1,257,777	1,234,933	9,678
50182	KAUT–TV	1,637,333	1,636,330	12,824
6864	KAUZ–TV	381,671	379,435	2,974
73101	KAVU–TV	320,484	320,363	2,511
49579	KAWB	186,919	186,845	1,464
49578	KAWE	136,033	133,937	1,050
58684	KAYU–TV	809,464	750,766	5,884
29234	KAZA–TV	14,973,535	13,810,130	108,230
17433	KAZD	6,747,915	6,744,517	52,857
1151	KAZQ	1,097,010	1,084,327	8,498
35811	KAZT–TV	436,925	359,273	2,816
4148	KBAK–TV	1,510,400	1,263,910	9,905
16940	KBCA	479,260	479,219	3,756
53586	KBCB	1,256,193	1,223,883	9,592
69619	KBCW	8,020,424	6,962,363	54,564
22685	KBDI–TV*	4,042,177	3,683,394	28,867
56384	KBEH*	17,736,497	17,695,306	138,678
65395	KBFD–DT	953,207	834,341	6,539
169030	KBGS–TV	159,269	156,802	1,229
61068	KBHE–TV	140,860	133,082	1,043
48556	KBIM–TV	205,701	205,647	1,612
29108	KBIN–TV	912,921	911,725	7,145
33658	KBJR–TV	275,585	271,298	2,126
83306	KBLN–TV	297,384	134,927	1,057
63768	KBLR	1,964,979	1,915,859	15,015
53324	KBME–TV	123,571	123,485	968
10150	KBMT	743,009	742,369	5,818
22121	KBMY	119,993	119,908	940
49760	KBOI–TV*	715,191	708,374	5,552
55370	KBRR	149,869	149,868	1,175
66414	KBSD–DT	155,012	154,891	1,214
66415	KBSH–DT	102,781	100,433	787
19593	KBSI	752,366	751,025	5,886
66416	KBSL–DT	49,814	48,483	380
4939	KBSV	1,352,166	1,262,708	9,896
62469	KBTC–TV	3,697,981	3,621,965	28,385
61214	KBTV–TV	734,008	734,008	5,752
6669	KBTX–TV	4,048,516	4,047,275	31,718
35909	KBVO	1,498,015	1,312,360	10,285
58618	KBVU	135,249	120,827	947
6823	KBYU–TV	2,389,548	2,209,060	17,312
33756	KBZK	116,485	106,020	831
21422	KCAL–TV*	17,499,483	16,889,157	132,360
11265	KCAU–TV*	714,315	706,224	5,535
14867	KCBA	3,094,778	2,278,552	17,857
27507	KCBD	414,804	414,091	3,245
9628	KCBS–TV	17,853,152	16,656,778	130,539
49750	KCBY–TV	89,156	73,211	574
33710	KCCI	1,102,130	1,095,326	8,584

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
9640	KCCW–TV	284,280	276,935	2,170
63158	KCDO–TV	2,798,103	2,650,225	20,770
62424	KCDT	694,584	638,366	5,003
83913	KCEB	1,163,228	1,159,665	9,088
57219	KCEC	3,874,159	3,654,445	28,640
10245	KCEN–TV	1,795,767	1,757,018	13,770
13058	KCET	16,875,019	15,402,588	120,710
18079	KCFW–TV	148,162	129,122	1,012
132606	KCGE–DT	123,930	123,930	971
60793	KCHF	1,118,671	1,085,205	8,505
33722	KCIT	382,477	381,818	2,992
62468	KCKA	953,680	804,362	6,304
41969	KCLO–TV	138,413	132,157	1,036
47903	KCNC–TV	3,794,400	3,541,089	27,752
71586	KCNS	8,048,427	7,069,903	55,407
33742	KCOP–TV*	17,386,133	16,647,708	130,468
19117	KCOS	1,014,396	1,014,205	7,948
63165	KCOY–TV	664,655	459,468	3,601
86208	KCPM	90,266	90,266	707
33894	KCPQ	4,439,875	4,311,994	33,793
53843	KCPT	2,507,879	2,506,224	19,641
33875	KCRA–TV	10,612,483	6,500,774	50,947
9719	KCRG–TV*	1,136.762	1,107,130	8,677
60728	KCSD–TV	273,553	273,447	2,143
59494	KCSG	174,814	164,765	1,291
33749	KCTS–TV	4,177,824	4,115,603	32,254
41230	KCTV	2,547,456	2,545,645	19,950
58605	KCVU	630,068	616,068	4,828
10036	KCWC–DT	44,216	39,439	309
64444	KCWE	2,460,172	2,458,913	19,271
51502	KCWI–TV	1,043,811	1,042,642	8,171
42008	KCWO–TV	50,707	50,685	397
166511	KCWV	207,398	207,370	1,625
24316	KCWX*	3,961,268	3,954,787	30,994
68713	KCWY–DT	79,948	79,414	622
22201	KDAF	6,648,507	6,645,226	52,079
33764	KDBC–TV	1,015,564	1,015,162	7,956
79258	KDCK	43,088	43,067	338
166332	KDCU–DT	796,251	795,504	6,234
38375	KDEN–TV	3,376,799	3,351,182	26,263
17037	KDFI	6,684,439	6,682,487	52,371
33770	KDFW	6,658,976	6,656,502	52,167
29102	KDIN–TV	1,088,376	1,083,845	8,494
25454	KDKA–TV	3,611,796	3,450,690	27,043
60740	KDKF	71,413	64,567	506
4691	KDLH	263,422	260,394	2,041
41975	KDLO–TV	208,354	208,118	1,631
55379	KDLT–TV	639,284	628,281	4,924
55375	KDLV–TV	96,873	96,620	757
25221	KDMD	374,951	372,727	2,921
78915	KDMI	1,141,990	1,140,939	8,942
56524	KDNL–TV	2,987,219	2,982,311	23,372
24518	KDOC–TV*	17,503,793	16,701,233	130,888
1005	KDOR–TV	1,112,060	1,108,556	8,688
60736	KDRV	519,706	440,002	3,448
61064	KDSD–TV	64,314	59,635	467
53329	KDSE	42,896	41,432	325
56527	KDSM–TV	1,096,220	1,095,478	8,585
49326	KDTN	6,602,327	6,600,186	51,726
83491	KDTP	26,564	24,469	192
33778	KDTV–DT	7,921,124	6,576,672	51,541
67910	KDTX–TV	6,680,738	6,679,424	52,347
126	KDVR	3,430,717	3,394,796	26,605
18084	KECI–TV*	211,745	193,803	1,519
51208	KECY–TV	399,372	394,379	3,091
58408	KEDT	513,683	513,683	4,026
55435	KEET	177,313	159,960	1,254
41983	KELO–TV	705,364	646,126	5,064
34440	KEMO–TV	8,048,427	7,069,903	55,407
2777	KEMV	619,889	559,135	4,382

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
26304	KENS	2,544,094	2,529,382	19,823
63845	KENV–DT	47,220	40,677	319
18338	KENW	87,017	87,017	682
50591	KEPB–TV	576,964	523,655	4,104
56029	KEPR–TV	453,259	433,260	3,395
49324	KERA–TV	6,681,083	6,677,852	52,334
40878	KERO–TV	1,285,357	1,164,979	9,130
61067	KESD–TV	166,018	159,195	1,248
25577	KESQ–TV	1,334,172	572,057	4,483
50205	KETA–TV	1,702,441	1,688,227	13,231
62182	KETC	2,913,924	2,911,313	22,816
37101	KETD	3,098,889	3,058,327	23,968
2768	KETG	426,883	409,511	3,209
12895	KETH–TV	6,088,821	6,088,677	47,717
55643	KETK–TV	1,031,567	1,030,122	8,073
2770	KETS	1,185,111	1,166,796	9,144
53903	KETV	1,355,714	1,350,740	10,586
92872	KETZ	526,890	523,877	4,106
68853	KEYC–TV	544,900	531,079	4,162
33691	KEYE–TV	2,732,257	2,652,529	20,788
60637	KEYT–TV	1,419,564	1,239,577	9,715
83715	KEYU	339,348	339,302	2,659
34406	KEZI	1,113,171	1,065,880	8,353
34412	KFBB–TV	93,519	91,964	721
125	KFCT	795,114	788,747	6,181
51466	KFDA–TV	385,064	383,977	3,009
22589	KFDM	732,665	732,588	5,741
65370	KFDX–TV	381,703	381,318	2,988
49264	KFFV	3,783,380	3,717,323	29,133
12729	KFFX–TV	409,952	403,692	3,164
83992	KFJX	515,708	505,647	3,963
42122	KFMB–TV	3,947,735	3,699,981	28,997
53321	KFME	393,045	392,472	3,076
74256	KFNB	80,382	79,842	626
21613	KFNE	54,988	54,420	426
21612	KFNR	10,988	10,965	86
66222	KFOR–TV	1,616,459	1,615,614	12,662
33716	KFOX–TV	1,023,999	1,018,549	7,982
41517	KFPH–DT	347,579	282,838	2,217
81509	KFPX–TV	963,969	963,846	7,554
31597	KFQX	186,473	163,637	1,282
59013	KFRE–TV	1,721,275	1,705,484	13,366
51429	KFSF–DT	7,348,828	6,528,430	51,163
66469	KFSM–TV	906,728	884,919	6,935
8620	KFSN–TV	1,836,607	1,819,585	14,260
29560	KFTA–TV	818,859	809,173	6,341
83714	KFTC	61,990	61,953	486
60537	KFTH–DT	6,080,688	6,080,373	47,652
60549	KFTR–DT	17,560,679	16,305,726	127,788
61335	KFTS	74,936	65,126	510
81441	KFTU–DT	113,876	109,731	860
34439	KFTV–DT	1,807,731	1,793,418	14,055
36917	KFVE	953,895	851,585	6,674
592	KFVS–TV	810,574	782,713	6,134
29015	KFWD	6,610,836	6,598,496	51,712
35336	KFXA	875,538	874,070	6,850
17625	KFXB–TV	373,280	368,466	2,888
70917	KFXK–TV	934,043	931,791	7,302
84453	KFXL–TV	361,632	361,097	2,830
41427	KFYR–TV	130,881	128,301	1,005
25685	KGAN	1,083,213	1,057,597	8,288
34457	KGBT–TV	1,230,798	1,230,791	9,646
52593	KGBY	270,089	218,544	1,713
7841	KGCW	888,054	886,499	6,947
24485	KGEB	1,186,225	1,150,201	9,014
34459	KGET–TV	917,927	874,332	6,852
53320	KGFE	114,564	114,564	898
7894	KGIN	230,535	228,338	1,789
83945	KGLA–DT	1,645,641	1,645,641	12,897
34445	KGMB	953,398	851,088	6,670

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
23302	KGMC	1,824,786	1,803,796	14,136
36914	KGMD–TV	94,323	93,879	736
36920	KGMV	193,564	162,230	1,271
10061	KGNS–TV	267,236	259,548	2,034
34470	KGO–TV	8,283,429	7,623,657	59,747
56034	KGPE	1,699,131	1,682,082	13,182
81694	KGPX–TV	685,626	624,955	4,898
25511	KGTF	161,885	160,568	1,258
40876	KGTV	3,960,667	3,682,219	28,858
36918	KGUN–TV*	1,398,527	1,212,484	9,502
34874	KGW	3,058,216	2,881,387	22,581
63177	KGWC–TV	80,475	80,009	627
63162	KGWL–TV	38,125	38,028	298
63166	KGWN–TV	469,467	440,388	3,451
63170	KGWR–TV	51,315	50,957	399
4146	KHAW–TV	95,204	94,851	743
34846	KHBC–TV	74,884	74,884	587
60353	KHBS	631,770	608,052	4,765
27300	KHCE–TV	2,353,883	2,348,391	18,404
26431	KHET	959,060	944,568	7,403
21160	KHGI–TV	233,973	229,173	1,796
29085	KHIN	1,041,244	1,039,383	8,146
17688	KHME	181,345	179,706	1,408
47670	KHMT	175,601	170,957	1,340
47987	KHNE–TV	203,931	202,944	1,590
34867	KHNL	953,398	851,088	6,670
60354	KHOG–TV	765,360	702,984	5,509
4144	KHON–TV	953,207	886,431	6,947
34529	KHOU*	6,083,336	6,081,785	47,663
4690	KHQA–TV	318,469	316,134	2,478
34537	KHQ–TV	822,371	774,821	6,072
30601	KHRR	1,227,847	1,166,890	9,145
34348	KHSD–TV	188,735	185,202	1,451
24508	KHSL–TV	625,904	608,850	4,772
69677	KHSV*	2,059,794	2,020,045	15,831
64544	KHVO	94,226	93,657	734
23394	KIAH	6,099,694	6,099,297	47,800
34564	KICU–TV	8,233,041	7,174,316	56,225
56028	KIDK	305,509	302,535	2,371
58560	KIDY	116,614	116,596	914
53382	KIEM–TV	174,390	160,801	1,260
66258	KIFI–TV*	324,422	320,118	2,509
10188	KIII	569,864	566,796	4,442
29095	KIIN	1,365,215	1,335,707	10,468
34527	KIKU	953,896	850,963	6,669
63865	KILM	17,256,205	15,804,489	123,860
56033	KIMA–TV	308,604	260,593	2,042
66402	KIMT	654,083	643,384	5,042
67089	KINC	2,002,066	1,920,903	15,054
34847	KING–TV	4,063,674	4,018,832	31,496
51708	KINT–TV	1,015,582	1,015,274	7,957
26249	KION–TV	2,400,317	855,808	6,707
62427	KIPT	171,405	170,455	1,336
66781	KIRO–TV	4,058,846	4,027,262	31,562
62430	KISU–TV	311,827	307,651	2,411
12896	KITU–TV	712,362	712,362	5,583
64548	KITV	953,207	839,906	6,582
59255	KIVI–TV	710,819	702,619	5,506
47285	KIXE–TV*	467,518	428,118	3,355
13792	KJJC–TV	82,749	81,865	642
14000	KJLA	17,929,100	16,794,896	131,622
20015	KJNP–TV	98,403	98,097	769
53315	KJRE	16,187	16,170	127
59439	KJRH–TV	1,416,108	1,397,311	10,951
55364	KJRR	45,515	44,098	346
42640	KJRW	137,375	126,743	993
7675	KJTL	379,594	379,263	2,972
55031	KJTV–TV	406,283	406,260	3,184
13814	KJUD	31,229	30,106	236
36607	KJZZ–TV	2,388,054	2,204,525	17,277

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
83180	KKAI	955,203	941,214	7,376
58267	KKAP	957,786	923,172	7,235
24766	KKCO	206,018	172,628	1,353
35097	KKJB	629,939	624,784	4,896
22644	KKPX–TV	7,902,064	6,849,907	53,683
35037	KKTV	2,795,275	2,293,502	17,974
35042	KLAS–TV	2,094,297	1,940,030	15,204
52907	KLAX–TV	367,212	366,839	2,875
3660	KLBK–TV	387,783	387,743	3,039
65523	KLBY	34,288	34,279	269
38430	KLCS	16,875,019	15,402,588	120,710
77719	KLCW–TV	381,889	381,816	2,992
51479	KLDO–TV	250,832	250,832	1,966
37105	KLEI	175,045	138,087	1,082
56032	KLEW–TV	164,908	148,256	1,162
35059	KLFY–TV	1,355,890	1,355,409	10,622
54011	KLJB	960,055	947,716	7,427
11264	KLKN	932,757	895,101	7,015
47975	KLNE–TV	120,338	120,277	943
38590	KLPA–TV	414,699	414,447	3,248
38588	KLPB–TV	749,053	749,053	5,870
749	KLRN	2,374,472	2,353,440	18,444
11951	KLRT–TV	1,171,678	1,152,541	9,032
8564	KLRU	2,614,658	2,575,518	20,184
8322	KLSR–TV	564,415	508,157	3,982
31114	KLST	199,067	169,551	1,329
24436	KLTJ	6,034,131	6,033,867	47,287
38587	KLTL–TV	423,574	423,574	3,320
38589	KLTM–TV	694,280	688,915	5,399
38591	KLTS–TV	883,661	882,589	6,917
68540	KLTV	1,069,690	1,051,361	8,240
12913	KLUJ–TV	1,195,751	1,195,751	9,371
57220	KLUZ–TV	1,079,718	1,019,302	7,988
11683	KLVX	2,044,150	1,936,083	15,173
82476	KLWB	1,065,748	1,065,748	8,352
40250	KLWY	541,043	538,231	4,218
64551	KMAU	213,060	188,953	1,481
51499	KMAX–TV	10,644,556	6,974,200	54,657
65686	KMBC–TV	2,507,895	2,506,661	19,645
56079	KMBH	1,225,732	1,225,732	9,606
35183	KMCB	69,357	66,203	519
41237	KMCC	2,064,592	2,010,262	15,754
42636	KMCI–TV	2,429,392	2,428,626	19,033
38584	KMCT–TV	267,004	266,880	2,092
22127	KMCY	71,797	71,793	563
162016	KMDE	35,409	35,401	277
26428	KMEB	221,810	203,470	1,595
39665	KMEG	708,748	704,130	5,518
35123	KMEX–DT	17,628,354	16,318,720	127,890
40875	KMGH–TV	3,815,253	3,574,365	28,012
35131	KMID	383,449	383,439	3,005
16749	KMIR–TV	2,760,914	730,764	5,727
63164	KMIZ	550,860	548,402	4,298
53541	KMLM–DT	293,290	293,290	2,299
52046	KMLU	711,951	708,107	5,549
47981	KMNE–TV	47,232	44,189	346
24753	KMOH–TV	199,885	184,283	1,444
4326	KMOS–TV	804,745	803,129	6,294
41425	KMOT	81,517	79,504	623
70034	KMOV	3,035,077	3,029,405	23,741
51488	KMPH–TV	1,725,397	1,697,871	13,306
73701	KMPX	6,678,829	6,674,706	52,310
44052	KMSB	1,321,614	1,039,442	8,146
68883	KMSP–TV	3,832,040	3,805,141	29,821
12525	KMSS–TV	1,068,120	1,066,388	8,357
43095	KMTP–TV	5,097,701	4,378,276	34,313
35189	KMTR	589,948	520,666	4,080
35190	KMTV–TV	1,346,549	1,344,796	10,539
77063	KMTW	761,521	761,516	5,968
35200	KMVT	184,647	176,351	1,382

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
32958	KMVU–DT	308,150	231,506	1,814
86534	KMYA–DT	200,764	200,719	1,573
51518	KMYS	2,273,888	2,267,913	17,774
54420	KMYT–TV	1,314,197	1,302,378	10,207
35822	KMYU	133,563	130,198	1,020
993	KNAT–TV	1,157,630	1,124,619	8,814
24749	KNAZ–TV	332,321	227,658	1,784
47906	KNBC	17,859,647	16,555,232	129,743
81464	KNBN	145,493	136,995	1,074
9754	KNCT	2,247,724	2,233,513	17,504
82611	KNDB	118,154	118,122	926
82615	KNDM	72,216	72,209	566
12395	KNDO	314,875	270,892	2,123
12427	KNDU	475,612	462,556	3,625
17683	KNEP	101,389	95,890	751
48003	KNHL	277,777	277,308	2,173
125710	KNIC–DT	2,398,296	2,383,294	18,678
59363	KNIN–TV*	708,289	703,838	5,516
48525	KNLC	2,944,530	2,939,956	23,040
48521	KNLJ	655,000	642,705	5,037
84215	KNMD–TV	1,120,286	1,100,869	8,628
55528	KNME–TV	1,149,036	1,103,695	8,650
47707	KNMT	2,887,142	2,794,995	21,904
48975	KNOE–TV	733,097	729,703	5,719
49273	KNOP–TV	87,904	85,423	669
10228	KNPB	604,614	462,732	3,626
55362	KNRR	25,957	25,931	203
35277	KNSD	3,861,660	3,618,321	28,357
19191	KNSN–TV	611,981	459,485	3,601
58608	KNSO*	1,976,317	1,931,825	15,140
35280	KNTV	8,022,662	7,168,995	56,183
144	KNVA	2,550,225	2,529,184	19,821
33745	KNVN	495,403	464,031	3,637
69692	KNVO	1,241,165	1,241,165	9,727
29557	KNWA–TV	815,678	796,488	6,242
16950	KNXT	2,166,688	2,116,003	16,583
59440	KNXV–TV	4,183,943	4,173,022	32,704
59014	KOAA–TV	1,391,946	1,087,809	8,525
50588	KOAB–TV	207,070	203,371	1,594
50590	KOAC–TV	1,957,282	1,543,401	12,096
58552	KOAM–TV	595,307	584,921	4,584
53928	KOAT–TV*	1,132,372	1,105,116	8,661
35313	KOB	1,152,841	1,113,162	8,724
35321	KOBF	201,911	166,177	1,302
8260	KOBI*	562,463	519,063	4,068
62272	KOBR	211,709	211,551	1,658
50170	KOCB	1,629,783	1,629,152	12,768
4328	KOCE–TV	17,447,903	16,331,792	127,992
84225	KOCM	1,434,325	1,433,605	11,235
12508	KOCO–TV	1,716,569	1,708,085	13,386
83181	KOCW	83,807	83,789	657
18283	KODE–TV	740,156	731,512	5,733
66195	KOED–TV*	1,497,297	1,459,833	11,441
50198	KOET	658,606	637,640	4,997
51189	KOFY–TV	5,097,701	4,378,276	34,313
34859	KOGG	190,829	161,310	1,264
166534	KOHD	201,310	197,662	1,549
35380	KOIN	2,983,136	2,851,968	22,351
35388	KOKH–TV	1,627,116	1,625,246	12,737
11910	KOKI–TV	1,366,220	1,352,227	10,597
48663	KOLD–TV	1,216,228	887,754	6,957
7890	KOLN	1,225,400	1,190,178	9,327
63331	KOLO–TV	959,178	826,985	6,481
28496	KOLR	1,076,144	1,038,613	8,140
21656	KOMO–TV	4,123,984	4,078,485	31,963
65583	KOMU–TV	551,658	542,544	4,252
35396	KONG	4,006,008	3,985,271	31,233
60675	KOOD	113,416	113,285	888
50589	KOPB–TV	3,059,231	2,875,815	22,538
2566	KOPX–TV	1,501,110	1,500,883	11,762

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
64877	KORO	560,983	560,983	4,396
6865	KOSA–TV	340,978	338,070	2,649
34347	KOTA–TV	174,876	152,861	1,198
8284	KOTI	298,175	97,132	761
35434	KOTV–DT	1,417,675	1,403,021	10,995
56550	KOVR	10,759,811	7,100,710	55,648
51101	KOZJ	429,982	427,991	3,354
51102	KOZK	836,532	825,077	6,466
3659	KOZL–TV	992,495	963,281	7,549
35455	KPAX–TV	206,895	193,201	1,514
67868	KPAZ–TV	4,190,080	4,176,323	32,730
6124	KPBS	3,584,237	3,463,189	27,141
50044	KPBT–TV	340,080	340,080	2,665
77452	KPCB–DT	30,861	30,835	242
35460	KPDX	2,970,703	2,848,423	22,323
12524	KPEJ–TV	368,212	368,208	2,886
41223	KPHO–TV	4,195,073	4,175,139	32,721
61551	KPIC	156,687	105,807	829
86205	KPIF	255,766	250,517	1,963
25452	KPIX–TV	8,340,753	7,480,594	58,625
58912	KPJK	7,672,473	6,652,674	52,137
166510	KPJR–TV	3,402,088	3,372,831	26,433
13994	KPLC	1,406,085	1,403,853	11,002
41964	KPLO–TV	55,827	52,765	414
35417	KPLR–TV	2,968,619	2,965,673	23,242
12144	KPMR	1,731,370	1,473,251	11,546
47973	KPNE–TV	92,675	89,021	698
35486	KPNX	4,215,834	4,184,428	32,793
77512	KPNZ	2,394,311	2,208,707	17,310
73998	KPOB–TV	144,525	143,656	1,126
26655	KPPX–TV	4,186,998	4,171,450	32,692
53117	KPRC–TV	6,099,422	6,099,076	47,798
48660	KPRY–TV	42,521	42,426	332
61071	KPSD–TV	19,886	18,799	147
53544	KPTB–DT	322,780	320,646	2,513
81445	KPTF–DT	84,512	84,512	662
77451	KPTH	660,556	655,373	5,136
51491	KPTM	1,414,998	1,414,014	11,082
33345	KPTS	832,000	827,866	6,488
50633	KPTV	2,998,460	2,847,263	22,314
82575	KPTW	80,374	80,012	627
1270	KPVI–DT	271,379	264,204	2,071
58835	KPXB–TV	6,062,472	6,062,271	47,510
68695	KPXC–TV	3,362,518	3,341,951	26,191
68834	KPXD–TV	6,555,157	6,553,373	51,359
33337	KPXE–TV	2,437,178	2,436,024	19,091
5801	KPXG–TV	3,026,219	2,882,598	22,591
81507	KPXJ	1,138,632	1,135,626	8,900
61173	KPXL–TV	2,257,007	2,243,520	17,582
35907	KPXM–TV	3,507,312	3,506,503	27,480
58978	KPXN–TV	17,256,205	15,804,489	123,860
77483	KPXO–TV	953,329	913,341	7,158
21156	KPXR–TV	828,915	821,250	6,436
10242	KQCA	9,931,378	5,931,341	46,484
41430	KQCD–TV	35,623	33,415	262
18287	KQCK	3,220,160	3,162,711	24,786
78322	KQCW–DT	1,128,198	1,123,324	8,803
35525	KQDS–TV	305,747	302,246	2,369
35500	KQED	8,195,398	7,283,828	57,083
35663	KQEH	8,195,398	7,283,828	57,083
8214	KQET	2,981,040	2,076,157	16,271
5471	KQIN	596,371	596,277	4,673
17686	KQME	188,783	184,719	1,448
61063	KQSD–TV	32,526	31,328	246
8378	KQSL*	196,316	133,564	1,047
20427	KQTV	1,494,987	1,401,160	10,981
78921	KQUP	697,016	551,824	4,325
306	KRBC–TV	229,395	229,277	1,797
166319	KRBK	983,888	966,187	7,572
22161	KRCA*	17,540,791	16,957,292	132,894

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
57945	KRCB	5,320,127	4,552,911	35,681
41110	KRCG	684,989	662,418	5,191
8291	KRCR–TV*	423,000	402,594	3,155
10192	KRCW–TV	2,966,577	2,842,523	22,277
49134	KRDK–TV	349,941	349,915	2,742
52579	KRDO–TV	2,622,603	2,272,383	17,809
70578	KREG–TV	149,306	95,141	746
34868	KREM	817,619	752,113	5,894
51493	KREN–TV	810,039	681,212	5,339
70596	KREX–TV	145,700	145,606	1,141
70579	KREY–TV	74,963	65,700	515
48589	KREZ–TV	148,079	105,121	824
43328	KRGV–TV	1,247,057	1,247,029	9,773
82698	KRII	133,840	132,912	1,042
29114	KRIN	949,313	923,735	7,239
25559	KRIS–TV	561,825	561,718	4,402
22204	KRIV	6,078,936	6,078,846	47,640
14040	KRMA–TV	3,722,512	3,564,949	27,939
14042	KRMJ	174,094	159,511	1,250
20476	KRMT	2,956,144	2,864,236	22,447
84224	KRMU	85,274	72,499	568
20373	KRMZ	36,293	33,620	263
47971	KRNE–TV	47,473	38,273	300
60307	KRNV–DT	981,687	825,465	6,469
65526	KRON–TV	8,050,508	7,087,419	55,544
53539	KRPV–DT	65,943	65,943	517
48575	KRQE*	1,135,461	1,105,093	8,661
57431	KRSU–TV	1,000,289	998,310	7,824
82613	KRTN–TV	96,062	74,452	583
35567	KRTV	92,687	90,846	712
84157	KRWB–TV	111,538	110,979	870
35585	KRWF	85,596	85,596	671
55516	KRWG–TV	894,492	661,703	5,186
48360	KRXI–TV	725,391	548,865	4,301
307	KSAN–TV	135,063	135,051	1,058
11911	KSAS–TV	752,513	752,504	5,897
53118	KSAT–TV	2,530,706	2,495,317	19,556
35584	KSAX	365,209	365,209	2,862
35587	KSAZ–TV*	4,203,126	4,178,448	32,746
38214	KSBI	1,577,231	1,575,865	12,350
19653	KSBW	5,083,461	4,429,165	34,711
19654	KSBY	535,029	495,562	3,884
82910	KSCC	502,915	502,915	3,941
10202	KSCE	1,015,148	1,010,581	7,920
35608	KSCI	17,447,903	16,331,792	127,992
72348	KSCW–DT	915,691	910,511	7,136
46981	KSDK	2,986,764	2,979,035	23,347
35594	KSEE	1,749,448	1,732,516	13,578
48658	KSFY–TV	670,536	607,844	4,764
17680	KSGW–TV	62,178	57,629	452
59444	KSHB–TV	2,432,205	2,431,273	19,054
73706	KSHV–TV	943,947	942,978	7,390
29096	KSIN–TV	340,143	338,811	2,655
664	KSIX–TV	82,902	73,553	576
35606	KSKN	731,818	643,590	5,044
70482	KSLA	1,009,108	1,008,281	7,902
6359	KSL–TV	2,390,742	2,206,920	17,296
71558	KSMN	320,813	320,808	2,514
33336	KSMO–TV	2,401,201	2,398,686	18,799
28510	KSMQ–TV	524,391	507,983	3,981
35611	KSMS–TV	1,589,263	882,948	6,920
21161	KSNB–TV	658,560	656,650	5,146
72359	KSNC	174,135	173,744	1,362
67766	KSNF	621,919	617,868	4,842
72361	KSNG	145,058	144,822	1,135
72362	KSNK	48,715	45,414	356
67335	KSNT	622,818	594,604	4,660
10179	KSNV	1,967,781	1,919,296	15,042
72358	KSNW	789,136	788,882	6,182
61956	KSPS–TV*	819,101	769,852	6,033

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
52953	KSPX–TV	6,745,180	4,966,590	38,923
166546	KSQA	382,328	374,290	2,933
53313	KSRE	75,181	75,181	589
35843	KSTC–TV	3,843,788	3,835,674	30,060
63182	KSTF	51,317	51,122	401
28010	KSTP–TV	3,788,898	3,782,053	29,640
60534	KSTR–DT	6,617,736	6,615,573	51,846
64987	KSTS	7,645,340	6,333,303	49,634
22215	KSTU	2,384,996	2,201,716	17,255
23428	KSTW	4,265,956	4,186,266	32,808
5243	KSVI	175,390	173,667	1,361
58827	KSWB–TV	3,677,190	3,488,655	27,341
60683	KSWK	79,012	78,784	617
35645	KSWO–TV	483,132	458,057	3,590
74449	KSWT	398,681	393,135	3,081
61350	KSYS	519,209	443,204	3,473
59988	KTAB–TV	270,967	268,579	2,105
999	KTAJ–TV	2,343,843	2,343,227	18,364
35648	KTAL–TV	1,094,332	1,092,958	8,566
12930	KTAS	471,882	464,149	3,638
81458	KTAZ	4,182,503	4,160,481	32,606
35649	KTBC	3,242,215	2,956,614	23,171
67884	KTBN–TV	17,795,677	16,510,302	129,391
67999	KTBO–TV	1,585,283	1,583,664	12,411
35652	KTBS–TV	1,163,228	1,159,665	9,088
28324	KTBU	6,035,927	6,035,725	47,302
67950	KTBW–TV	4,202,104	4,113,420	32,237
35655	KTBY	348,080	346,562	2,716
68594	KTCA–TV	3,693,877	3,684,081	28,872
68597	KTCI–TV	3,606,606	3,597,183	28,191
35187	KTCW	100,392	83,777	657
36916	KTDO	1,015,336	1,010,771	7,921
2769	KTEJ	419,750	417,368	3,271
83707	KTEL–TV	53,423	53,414	419
35666	KTEN	566,422	564,096	4,421
24514	KTFD–TV	3,210,669	3,172,543	24,863
35512	KTFF–DT	2,225,169	2,203,398	17,268
20871	KTFK–DT	6,969,307	5,211,719	40,844
68753	KTFN	1,017,335	1,013,157	7,940
35084	KTFQ–TV	1,151,433	1,117,061	8,754
29232	KTGM	159,358	159,091	1,247
2787	KTHV*	1,275,062	1,246,348	9,768
29100	KTIN	281,096	279,385	2,190
66170	KTIV	751,089	746,274	5,849
49397	KTKA–TV	567,958	566,406	4,439
35670	KTLA	18,156,910	16,870,262	132,212
62354	KTLM	1,014,202	1,014,186	7,948
49153	KTLN–TV	5,209,087	4,490,249	35,190
64984	KTMD	6,095,741	6,095,606	47,771
14675	KTMF	187,251	168,526	1,321
10177	KTMW	2,261,671	2,144,791	16,809
21533	KTNC–TV	8,048,427	7,069,903	55,407
47996	KTNE–TV	100,341	95,324	747
60519	KTNL–TV	8,642	8,642	68
74100	KTNV–TV	2,094,506	1,936,752	15,178
71023	KTNW	450,926	432,398	3,389
8651	KTOO–TV	31,269	31,176	244
7078	KTPX–TV	1,066,196	1,063,754	8,337
68541	KTRE	441,879	421,406	3,303
35675	KTRK–TV	6,114,259	6,112,870	47,907
28230	KTRV–TV	714,833	707,557	5,545
69170	KTSC	3,124,536	2,949,795	23,118
61066	KTSD–TV	83,645	82,828	649
37511	KTSF	7,921,124	6,576,672	51,541
67760	KTSM–TV	1,015,348	1,011,264	7,925
35678	KTTC	815,213	731,919	5,736
28501	KTTM	76,133	73,664	577
11908	KTTU	1,324,801	1,060,613	8,312
22208	KTTV*	17,380,551	16,693,085	130,824
28521	KTTW	329,557	326,309	2,557

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
65355	KTTZ–TV	380,240	380,225	2,980
35685	KTUL	1,416,959	1,388,183	10,879
10173	KTUU–TV	380,240	379,047	2,971
77480	KTUZ–TV	1,668,531	1,666,026	13,057
49632	KTVA	342,517	342,300	2,683
34858	KTVB*	714,865	707,882	5,548
31437	KTVC	137,239	100,204	785
68581	KTVD	3,800,970	3,547,607	27,803
35692	KTVE	641,139	640,201	5,017
49621	KTVF	98,068	97,929	767
5290	KTVH–DT	228,832	184,264	1,444
35693	KTVI	2,979,889	2,976,494	23,327
40993	KTVK	4,184,825	4,173,024	32,704
22570	KTVL	415,327	358,979	2,813
18066	KTVM–TV*	260,105	217,694	1,706
59139	KTVN*	955,490	800,420	6,273
21251	KTVO	148,780	148,647	1,165
35694	KTVQ	179,797	173,271	1,358
50592	KTVR	147,808	54,480	427
23422	KTVT	6,912,366	6,908,715	54,144
35703	KTVU	7,913,996	6,825,643	53,493
35705	KTVW–DT	4,173,111	4,159,807	32,600
68889	KTVX	2,389,392	2,200,520	17,245
55907	KTVZ	201,828	198,558	1,556
18286	KTWO–TV	80,426	79,905	626
70938	KTWU	1,703,798	1,562,305	12,244
51517	KTXA	6,876,811	6,873,221	53,865
42359	KTXD–TV	6,706,651	6,704,781	52,545
51569	KTXH	6,092,710	6,092,525	47,747
10205	KTXL	7,355,088	5,411,484	42,410
308	KTXS–TV	247,603	246,760	1,934
69315	KUAC–TV	98,717	98,189	770
51233	KUAM–TV	159,358	159,358	1,249
2722	KUAS–TV	994,802	977,391	7,660
2731	KUAT–TV	1,485,024	1,253,342	9,822
60520	KUBD	14,817	13,363	105
70492	KUBE–TV	6,090,970	6,090,817	47,734
1136	KUCW	2,388,889	2,199,787	17,240
69396	KUED	2,388,995	2,203,093	17,266
69582	KUEN	2,364,481	2,184,483	17,120
82576	KUES	30,925	25,978	204
82585	KUEW	132,168	120,411	944
66611	KUFM–TV	187,680	166,697	1,306
169028	KUGF–TV	86,622	85,986	674
68717	KUHM–TV	154,836	145,241	1,138
69269	KUHT*	6,090,213	6,089,665	47,725
62382	KUID–TV	432,855	284,023	2,226
169027	KUKL–TV	124,505	115,844	908
35724	KULR–TV	177,242	170,142	1,333
41429	KUMV–TV	41,607	41,224	323
81447	KUNP	130,559	43,472	341
4624	KUNS–TV	4,023,436	4,002,433	31,367
86532	KUOK	28,974	28,945	227
66589	KUON–TV	1,375,257	1,360,005	10,658
86263	KUPB	318,914	318,914	2,499
65535	KUPK	149,642	148,180	1,161
27431	KUPT	87,602	87,602	687
89714	KUPU	956,178	948,005	7,430
57884	KUPX–TV	2,374,672	2,191,229	17,173
23074	KUSA	3,803,461	3,561,587	27,912
61072	KUSD–TV	460,480	460,277	3,607
10238	KUSI–TV	3,572,818	3,435,670	26,925
43567	KUSM–TV	115,864	106,398	834
69694	KUTF	1,210,774	1,031,870	8,087
81451	KUTH–DT	2,219,788	2,027,174	15,887
68886	KUTP	4,191,015	4,176,014	32,727
35823	KUTV	2,388,211	2,192,182	17,180
63927	KUVE–DT	1,294,971	964,396	7,558
7700	KUVI–DT	1,204,490	1,009,943	7,915
35841	KUVN–DT	6,680,126	6,678,157	52,337

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
58609	KUVS–DT	4,043,413	4,005,657	31,392
49766	KVAL–TV	1,016,673	866,173	6,788
32621	KVAW	76,153	76,153	597
58795	KVCR–DT *	18,215,524	17,467,140	136,890
35846	KVCT	288,221	287,446	2,253
10195	KVCW	1,967,550	1,918,811	15,038
64969	KVDA	2,400,582	2,391,810	18,745
19783	KVEA	17,423,429	16,146,250	126,538
12523	KVEO–TV	1,244,504	1,244,504	9,753
2495	KVEW	476,720	464,347	3,639
35852	KVHP	747,917	747,837	5,861
49832	KVIA–TV	1,015,350	1,011,266	7,925
35855	KVIE *	10,759,440	7,467,369	58,522
40450	KVIH–TV	91,912	91,564	718
40446	KVII–TV	379,042	378,218	2,964
61961	KVLY–TV	350,732	350,449	2,746
16729	KVMD	6,145,526	4,116,524	32,261
83825	KVME–TV	26,711	22,802	179
25735	KVOA	1,317,956	1,030,404	8,075
35862	KVOS–TV	2,019,168	1,954,667	15,319
69733	KVPT	1,744,349	1,719,318	13,474
55372	KVRR	356,645	356,645	2,795
166331	KVSN–DT	2,706,244	2,283,409	17,895
608	KVTH–DT	303,755	299,230	2,345
2784	KVTJ–DT	1,466,426	1,465,802	11,487
607	KVTN–DT	936,328	925,884	7,256
35867	KVUE	2,661,290	2,611,314	20,465
78910	KVUI	257,964	251,872	1,974
35870	KVVU–TV	2,042,029	1,935,466	15,168
36170	KVYE	396,495	392,498	3,076
35095	KWBA–TV	1,129,524	1,073,029	8,409
78314	KWBM	657,822	639,560	5,012
27425	KWBN	953,207	840,455	6,587
76268	KWBQ	1,148,810	1,105,600	8,665
66413	KWCH–DT	883,647	881,674	6,910
71549	KWCM–TV	252,284	244,033	1,912
35419	KWDK	4,196,263	4,118,699	32,278
42007	KWES–TV	424,862	423,544	3,319
50194	KWET	127,976	112,750	884
35881	KWEX–DT	2,376,463	2,370,469	18,577
35883	KWGN–TV	3,706,495	3,513,577	27,536
37099	KWHB	979,393	978,719	7,670
37103	KWHD	97,959	94,560	741
36846	KWHE	952,966	834,341	6,539
26231	KWHY–TV *	17,736,497	17,695,306	138,678
35096	KWKB	1,121,676	1,111,629	8,712
162115	KWKS	39,708	39,323	308
12522	KWKT–TV	1,010,550	1,010,236	7,917
21162	KWNB–TV	91,093	89,332	700
67347	KWOG	512,412	505,049	3,958
56852	KWPX–TV	4,220,008	4,148,577	32,512
6885	KWQC–TV	1,080,156	1,067,249	8,364
29121	KWSD	280,675	280,672	2,200
53318	KWSE	54,471	53,400	418
71024	KWSU–TV	725,554	468,295	3,670
25382	KWTV–DT	1,628,106	1,627,198	12,752
35903	KWTX–TV	2,071,023	1,972,365	15,457
593	KWWL *	1,089,498	1,078,458	8,452
84410	KWWT	293,291	293,291	2,299
14674	KWYB	86,495	69,598	545
10032	KWYP–DT	128,874	126,992	995
35920	KXAN–TV	2,678,666	2,624,648	20,569
49330	KXAS–TV	6,774,295	6,771,827	53,071
24287	KXGN–TV	14,217	13,883	109
35954	KXII	2,323,974	2,264,951	17,750
55083	KXLA	17,929,100	16,794,896	131,622
35959	KXLF–TV	258,100	217,808	1,707
53847	KXLN–DT	6,085,891	6,085,712	47,694
35906	KXLT–TV	348,025	347,296	2,722
61978	KXLY–TV *	772,116	740,960	5,807

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
55684	KXMA–TV	32,005	31,909	250
55686	KXMB–TV	142,755	138,506	1,085
55685	KXMC–TV	97,569	89,483	701
55683	KXMD–TV	37,962	37,917	297
47995	KXNE–TV	300,021	298,839	2,342
81593	KXNW	602,168	597,747	4,685
35991	KXRM–TV	1,843,363	1,500,689	11,761
1255	KXTF	121,558	121,383	951
25048	KXTV	10,759,864	7,477,140	58,598
35994	KXTX–TV	6,721,578	6,718,616	52,654
62293	KXVA	185,478	185,276	1,452
23277	KXVO	1,404,703	1,403,380	10,998
9781	KXXV	1,771,620	1,748,287	13,701
31870	KYAZ	6,038,257	6,038,071	47,320
21488	KYES–TV	381,413	380,355	2,981
29086	KYIN	581,748	574,691	4,504
60384	KYLE–TV	324,032	324,025	2,539
33639	KYMA–DT	396,278	391,619	3,069
47974	KYNE–TV	929,406	929,242	7,282
53820	KYOU–TV	651,334	640,935	5,023
36003	KYTV	1,095,904	1,083,524	8,492
55644	KYTX	927,327	925,550	7,254
13815	KYUR	379,943	379,027	2,970
5237	KYUS–TV	12,496	12,356	97
33752	KYVE	301,951	259,559	2,034
55762	KYVV–TV	67,201	67,201	527
25453	KYW–TV	11,061,941	10,876,511	85,239
69531	KZJL	6,037,458	6,037,272	47,314
69571	KZJO	4,179,154	4,124,424	32,323
61062	KZSD–TV	41,207	35,825	281
33079	KZTV	567,635	564,464	4,424
57292	WAAY–TV	1,498,006	1,428,197	11,193
1328	WABC–TV*	20,948,273	20,560,001	161,129
43203	WABG–TV	393,020	392,348	3,075
17005	WABI–TV	530,773	510,729	4,003
16820	WABM	1,703,202	1,675,700	13,132
23917	WABW–TV	1,097,560	1,096,376	8,592
19199	WACH	1,317,429	1,316,792	10,320
189358	WACP	9,415,263	9,301,049	72,892
23930	WACS–TV	621,686	616,443	4,831
60018	WACX	3,967,118	3,966,535	31,086
361	WACY–TV	946,580	946,071	7,414
455	WADL	4,610,514	4,602,962	36,073
589	WAFB	1,857,882	1,857,418	14,557
591	WAFF	1,197,068	1,110,122	8,700
70689	WAGA–TV	6,000,355	5,923,191	46,420
48305	WAGM–TV	64,721	63,331	496
37809	WAGV	1,193,158	1,060,935	8,315
706	WAIQ	611,733	609,794	4,779
701	WAKA	799,637	793,645	6,220
4143	WALA–TV	1,320,419	1,318,127	10,330
70713	WALB	773,899	772,467	6,054
60536	WAMI–DT	5,449,193	5,449,193	42,705
70852	WAND	1,400,271	1,398,521	10,960
39270	WANE–TV	1,108,844	1,108,844	8,690
52280	WAOE	613,812	613,784	4,810
64546	WAOW	636,957	629,068	4,930
52073	WAPA–TV	3,764,742	3,363,102	21,902
49712	WAPT	793,621	791,620	6,204
67792	WAQP	1,992,340	1,983,143	15,542
13206	WATC–DT	5,637,070	5,616,513	44,017
71082	WATE–TV	1,874,433	1,638,059	12,837
22819	WATL	5,882,837	5,819,099	45,604
20287	WATM–TV	937,438	785,510	6,156
11907	WATN–TV	1,787,595	1,784,560	13,986
13989	WAVE	1,846,212	1,836,231	14,391
71127	WAVY–TV	2,039,358	2,039,341	15,982
54938	WAWD	553,676	553,591	4,338
65247	WAWV–TV	705,549	699,377	5,481
12793	WAXN–TV	2,677,951	2,669,224	20,919

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
65696	WBAL–TV	9,596,587	9,190,139	72,023
74417	WBAY–TV	1,225,928	1,225,335	9,603
71085	WBBH–TV	2,046,391	2,046,391	16,038
65204	WBBJ–TV	662,148	658,016	5,157
9617	WBBM–TV *	9,914,233	9,907,806	77,647
9088	WBBZ–TV	1,269,256	1,260,686	9,880
70138	WBDT	3,660,544	3,646,874	28,581
51349	WBEC–TV	5,421,355	5,421,355	42,487
10758	WBFF	8,509,757	8,339,882	65,360
12497	WBFS–TV	5,349,613	5,349,613	41,925
6568	WBGU–TV	1,343,816	1,343,816	10,531
81594	WBIF	309,707	309,707	2,427
84802	WBIH	736,501	724,345	5,677
717	WBIQ	1,563,080	1,532,266	12,008
46984	WBIR–TV	1,978,347	1,701,857	13,337
67048	WBKB–TV	136,823	130,625	1,024
34167	WBKI	1,983,992	1,968,048	15,424
4692	WBKO	963,413	862,651	6,761
76001	WBKP	55,655	55,305	433
68427	WBMM	562,284	562,123	4,405
73692	WBNA	1,699,683	1,666,248	13,058
23337	WBNG–TV *	1,442,745	1,060,329	8,310
71217	WBNS–TV	2,847,721	2,784,795	21,824
72958	WBNX–TV	3,642,304	3,629,347	28,443
71218	WBOC–TV	813,888	813,888	6,378
71220	WBOY–TV	711,302	621,367	4,870
60850	WBPH–TV *	10,613,847	9,474,797	74,254
7692	WBPX–TV	6,833,712	6,761,949	52,993
5981	WBRA–TV	1,726,408	1,677,204	13,144
71221	WBRC	1,884,007	1,849,135	14,492
71225	WBRE–TV *	2,879,196	2,244,735	17,592
38616	WBRZ–TV	2,223,336	2,222,309	17,416
82627	WBSF	1,836,543	1,832,446	14,361
30826	WBTV	4,433,020	4,295,962	33,667
66407	WBTW	1,975,457	1,959,172	15,354
16363	WBUI	981,884	981,868	7,695
59281	WBUP	126,472	112,603	882
60830	WBUY–TV	1,569,254	1,567,815	12,287
72971	WBXX–TV	2,142,759	1,984,544	15,553
25456	WBZ–TV	7,764,394	7,616,633	59,692
63153	WCAU	11,269,831	11,098,540	86,979
363	WCAV	949,729	727,455	5,701
46728	WCAX–TV	784,748	661,547	5,185
39659	WCBB	964,079	910,222	7,133
10587	WCBD–TV	1,149,489	1,149,489	9,009
12477	WCBI–TV	680,511	678,424	5,317
9610	WCBS–TV	21,713,751	21,187,849	166,049
49157	WCCB	3,542,464	3,489,260	27,345
9629	WCCO–TV	3,837,442	3,829,714	30,013
14050	WCCT–TV	5,818,471	5,307,612	41,596
69544	WCCU	395,106	395,102	3,096
3001	WCCV–TV	3,391,703	2,482,544	16,168
23937	WCES–TV	1,098,868	1,097,706	8,603
65666	WCET	3,122,924	3,108,328	24,360
46755	WCFE–TV	445,131	411,198	3,223
71280	WCHS–TV	1,352,824	1,274,766	9,990
42124	WCIA	796,609	795,428	6,234
711	WCIQ *	3,181,068	3,033,573	23,774
71428	WCIU–TV	9,891,328	9,888,390	77,495
9015	WCIV	1,152,800	1,152,800	9,034
42116	WCIX	554,002	549,682	4,308
16993	WCJB–TV	977,492	977,492	7,661
11125	WCLF	4,097,389	4,096,624	32,105
68007	WCLJ–TV	2,258,426	2,256,937	17,688
50781	WCMH–TV	2,756,260	2,712,989	21,262
9917	WCML	233,439	224,255	1,757
9908	WCMU–TV	707,702	699,551	5,482
9922	WCMV	418,707	407,222	3,191
9913	WCMW	106,975	104,859	822
32326	WCNC–TV	3,822,849	3,747,880	29,372

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
53734	WCNY–TV	1,358,685	1,290,632	10,115
73642	WCOV–TV	862,899	859,333	6,735
40618	WCPB	560,426	560,426	4,392
59438	WCPO–TV	3,328,920	3,311,833	25,955
10981	WCPX–TV	9,674,477	9,673,859	75,814
71297	WCSC–TV	1,028,018	1,028,018	8,057
39664	WCSH	1,682,955	1,457,618	11,423
69479	WCTE	612,760	541,314	4,242
18334	WCTI–TV	1,680,664	1,678,237	13,152
31590	WCTV	1,049,825	1,049,779	8,227
33081	WCTX	7,844,936	7,332,431	57,464
65684	WCVB–TV	7,741,540	7,606,326	59,611
9987	WCVE–TV	1,582,094	1,581,725	12,396
83304	WCVI–TV	50,601	50,495	396
34204	WCVN–TV	2,108,475	2,100,226	16,459
9989	WCVW	1,461,748	1,461,643	11,455
73042	WCWF	1,040,984	1,040,525	8,155
35385	WCWG	3,630,551	3,299,114	25,855
29712	WCWJ	1,582,959	1,582,959	12,406
73264	WCWN	1,698,469	1,512,848	11,856
2455	WCYB–TV*	2,363,002	2,057,404	16,124
11291	WDAF–TV	2,539,581	2,537,411	19,886
21250	WDAM–TV	512,594	500,343	3,921
22129	WDAY–TV	339,239	338,856	2,656
22124	WDAZ–TV	151,720	151,659	1,189
71325	WDBB	1,669,214	1,646,336	12,902
71326	WDBD	940,665	939,489	7,363
71329	WDBJ	1,606,844	1,439,716	11,283
51567	WDCA	8,070,491	8,015,328	62,816
16530	WDCQ–TV	1,269,199	1,269,199	9,947
30576	WDCW	8,155,998	8,114,847	63,596
54385	WDEF–TV	1,731,483	1,508,250	11,820
32851	WDFX–TV	271,499	270,942	2,123
43846	WDHN	452,377	451,978	3,542
71338	WDIO–DT	341,506	327,469	2,566
714	WDIQ	663,062	620,124	4,860
53114	WDIV–TV	5,425,162	5,424,963	42,515
71427	WDJT–TV	3,085,540	3,081,475	24,150
39561	WDKA	621,903	620,169	4,860
64017	WDKY–TV	1,204,817	1,173,579	9,197
67893	WDLI–TV	4,147,298	4,114,920	32,249
72335	WDPB	596,888	596,888	4,678
83740	WDPM–DT	1,365,977	1,364,744	10,695
1283	WDPN–TV*	11,594,463	11,467,616	89,872
6476	WDPX–TV	6,833,712	6,761,949	52,993
28476	WDRB	1,987,708	1,971,926	15,454
12171	WDSC–TV	3,376,247	3,376,247	26,460
17726	WDSE	330,994	316,643	2,482
71353	WDSI–TV	1,100,302	1,042,191	8,168
71357	WDSU	1,613,076	1,613,076	12,642
7908	WDTI	2,095,312	2,094,395	16,414
65690	WDTN	3,660,544	3,646,874	28,581
70592	WDTV	962,532	850,394	6,665
25045	WDVM–TV	3,074,837	2,646,508	20,741
4110	WDWL	2,638,361	2,379,555	15,497
49421	WEAO	3,919,602	3,892,146	30,503
71363	WEAR–TV	1,524,131	1,523,479	11,940
7893	WEAU	991,019	952,513	7,465
61003	WEBA–TV	645,039	635,967	4,984
19561	WECN	2,886,669	2,596,015	16,907
48666	WECT	1,134,918	1,134,918	8,894
13602	WEDH	5,328,800	4,724,167	37,023
13607	WEDN	3,451,170	2,643,344	20,716
69338	WEDQ	4,882,446	4,881,322	38,255
21808	WEDU	5,379,887	5,365,612	42,050
13594	WEDW	5,996,408	5,544,708	43,454
13595	WEDY	5,328,800	4,724,167	37,023
24801	WEEK–TV	698,238	698,220	5,472
6744	WEFS	3,380,743	3,380,743	26,495
24215	WEHT	847,299	835,128	6,545

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
721	WEIQ	1,046,465	1,046,116	8,198
18301	WEIU–TV	462,775	462,711	3,626
69271	WEKW–TV	1,072,240	546,881	4,286
60825	WELF–TV	1,491,382	1,414,528	11,086
26602	WELU	2,248,146	2,020,075	13,156
40761	WEMT	1,726,085	1,186,706	9,300
69237	WENH–TV	4,500,498	4,328,222	33,920
71508	WENY–TV	543,162	413,668	3,242
83946	WEPH	604,105	602,833	4,724
81508	WEPX–TV	859,535	859,535	6,736
25738	WESH *	4,059,180	4,048,459	31,728
65670	WETA–TV	7,607,834	7,576,217	59,375
69944	WETK	670,087	558,842	4,380
60653	WETM–TV	721,800	620,074	4,860
18252	WETP–TV	2,087,588	1,791,130	14,037
2709	WEUX	380,569	373,680	2,929
72041	WEVV–TV	752,417	750,555	5,882
59441	WEWS–TV	4,112,984	4,078,299	31,962
72052	WEYI–TV	3,715,686	3,652,991	28,628
72054	WFAA *	6,927,782	6,918,595	54,221
81669	WFBD	814,185	813,564	6,376
69532	WFDC–DT	8,155,998	8,114,847	63,596
10132	WFFF–TV	592,012	506,744	3,971
25040	WFFT–TV	1,088,489	1,088,354	8,529
11123	WFGC	2,759,457	2,759,457	21,626
6554	WFGX	1,440,245	1,437,744	11,268
13991	WFIE	731,856	729,985	5,721
715	WFIQ	546,563	544,258	4,265
64592	WFLA–TV	5,450,176	5,446,917	42,687
22211	WFLD	9,957,301	9,954,828	78,016
72060	WFLI–TV	1,272,913	1,125,349	8,819
39736	WFLX	5,740,086	5,740,086	44,985
72062	WFMJ–TV	3,504,955	3,262,270	25,566
72064	WFMY–TV	4,772,783	4,740,684	37,153
39884	WFMZ–TV *	10,613,847	9,474,797	74,254
83943	WFNA	1,391,519	1,390,447	10,897
47902	WFOR–TV	5,398,266	5,398,266	42,306
11909	WFOX–TV	1,602,888	1,602,888	12,562
40626	WFPT	5,829,226	5,442,352	42,652
21245	WFPX–TV	2,637,949	2,634,141	20,644
25396	WFQX–TV	537,340	534,314	4,187
9635	WFRV–TV	1,201,204	1,200,502	9,408
53115	WFSB	4,752,788	4,370,519	34,252
6093	WFSG	364,961	364,796	2,859
21801	WFSU–TV	576,105	576,093	4,515
11913	WFTC	3,787,177	3,770,207	29,547
64588	WFTS–TV	5,077,970	5,077,719	39,794
16788	WFTT–TV	4,523,828	4,521,879	35,438
72076	WFTV	3,849,576	3,849,576	30,169
70649	WFTX–TV	1,775,097	1,775,097	13,911
60553	WFTY–DT	5,678,755	5,560,460	43,577
25395	WFUP	217,655	216,861	1,700
60555	WFUT–DT	19,992,096	19,643,518	153,946
22108	WFWA	1,035,114	1,034,862	8,110
9054	WFXB	1,393,865	1,393,510	10,921
3228	WFXG	1,070,032	1,057,760	8,290
70815	WFXL	793,637	785,106	6,153
19707	WFXP	583,315	562,500	4,408
24813	WFXR	1,426,061	1,286,450	10,082
6463	WFXT	7,494,070	7,400,830	58,000
22245	WFXU	211,721	211,721	1,659
43424	WFXV	633,597	558,968	4,381
25236	WFXW	274,078	270,967	2,124
41397	WFYI	2,389,627	2,388,970	18,722
53930	WGAL *	6,287,688	5,610,833	43,972
2708	WGBA–TV	1,170,375	1,170,127	9,170
24314	WGBC	249,415	249,235	1,953
72099	WGBH–TV *	7,711,842	7,601,732	59,575
12498	WGBO–DT	9,771,815	9,769,552	76,564
72098	WGBX–TV	7,476,751	7,378,958	57,829

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
72096	WGBY–TV	4,470,009	3,739,675	29,308
72120	WGCL–TV	6,027,276	5,961,471	46,720
62388	WGCU	1,403,602	1,403,602	11,000
54275	WGEM–TV*	361,598	356,682	2,795
27387	WGEN–TV	43,037	43,037	337
7727	WGFL	759,234	759,234	5,950
25682	WGGB–TV	3,443,447	3,005,875	23,557
11027	WGGN–TV	1,991,462	1,969,331	15,434
9064	WGGS–TV	2,759,326	2,705,067	21,200
72106	WGHP	3,774,522	3,734,200	29,265
710	WGIQ	363,849	363,806	2,851
12520	WGMB–TV	1,739,804	1,739,640	13,634
25683	WGME–TV	1,495,724	1,325,465	10,388
24618	WGNM	742,533	741,501	5,811
72119	WGNO	1,641,765	1,641,765	12,867
9762	WGNT	1,875,612	1,875,578	14,699
72115	WGN–TV	9,942,959	9,941,552	77,912
40619	WGPT	578,294	344,300	2,698
65074	WGPX–TV	2,765,350	2,754,743	21,589
64547	WGRZ	1,878,725	1,812,309	14,203
63329	WGTA	1,061,654	1,030,538	8,076
66285	WGTE–TV	2,210,496	2,208,927	17,311
59279	WGTQ	95,618	92,019	721
59280	WGTU	358,543	353,477	2,770
23948	WGTV	5,880,594	5,832,714	45,711
7623	WGTW–TV	807,797	807,797	6,331
24783	WGVK	2,439,225	2,437,526	19,103
24784	WGVU–TV*	1,825,744	1,784,264	13,983
21536	WGWG	986,963	986,963	7,735
56642	WGWW	1,677,166	1,647,976	12,915
58262	WGXA	779,955	779,087	6,106
73371	WHAM–TV	1,323,785	1,275,674	9,997
32327	WHAS–TV*	1,955,983	1,925,901	15,093
6096	WHA–TV	1,636,473	1,629,171	12,768
13950	WHBF–TV*	1,712,339	1,704,072	13,355
12521	WHBQ–TV	1,736,335	1,708,345	13,388
10894	WHBR	1,302,764	1,302,041	10,204
65128	WHDF	1,553,469	1,502,852	11,778
72145	WHDH	7,319,659	7,236,210	56,710
83929	WHDT	5,640,324	5,640,324	44,203
70041	WHEC–TV	1,322,243	1,279,606	10,028
67971	WHFT–TV	5,417,409	5,417,409	42,456
41458	WHIO–TV	3,896,757	3,879,363	30,403
713	WHIQ	1,278,174	1,225,940	9,608
61216	WHIZ–TV	910,864	831,894	6,520
65919	WHKY–TV	3,038,732	2,974,919	23,314
18780	WHLA–TV	467,264	443,002	3,472
48668	WHLT	484,432	483,532	3,789
24582	WHLV–TV	3,825,468	3,825,468	29,980
37102	WHMB–TV	2,847,719	2,828,250	22,165
61004	WHMC	943,543	942,807	7,389
36117	WHME–TV	1,271,796	1,271,715	9,966
37106	WHNO	1,499,653	1,499,653	11,753
72300	WHNS	2,549,397	2,266,911	17,766
48693	WHNT–TV	1,569,885	1,487,578	11,658
66221	WHO–DT*	1,120,480	1,099,818	8,619
6866	WHOI	679,446	679,434	5,325
72313	WHP–TV	4,030,693	3,538,096	27,728
51980	WHPX–TV	5,579,464	5,114,336	40,081
73036	WHRM–TV	495,398	495,174	3,881
25932	WHRO–TV	2,149,481	2,149,410	16,845
68058	WHSG–TV	5,870,314	5,808,605	45,522
4688	WHSV–TV	845,013	711,912	5,579
9990	WHTJ	723,698	490,045	3,840
72326	WHTM–TV	2,829,585	2,367,000	18,550
11117	WHTN	1,872,713	1,856,716	14,551
27772	WHUT–TV	7,649,763	7,617,337	59,697
18793	WHWC–TV	994,710	946,335	7,416
72338	WHYY–TV	10,379,045	9,982,651	78,234
5360	WIAT	1,837,072	1,802,810	14,129

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
63160	WIBW–TV	1,089,708	1,050,918	8,236
25684	WICD	1,238,332	1,237,046	9,695
25686	WICS	1,011,833	1,007,132	7,893
24970	WICU–TV	740,115	683,435	5,356
62210	WICZ–TV	976,771	780,174	6,114
18410	WIDP	2,559,306	2,286,123	14,888
26025	WIFS	1,400,358	1,397,144	10,949
720	WIIQ	353,241	347,685	2,725
68939	WILL–TV	1,178,545	1,158,147	9,076
6863	WILX–TV	3,378,644	3,218,221	25,221
22093	WINK–TV	1,851,105	1,851,105	14,507
67787	WINM	1,001,485	971,031	7,610
41314	WINP–TV	2,804,646	2,748,454	21,540
3646	WIPB	1,962,078	1,961,899	15,375
48408	WIPL	850,656	799,165	6,263
53863	WIPM–TV	2,196,157	1,870,057	2,269
53859	WIPR–TV	3,596,802	3,382,849	22,031
10253	WIPX–TV	2,258,426	2,256,937	17,688
39887	WIRS	1,153,382	916,310	4,706
71336	WIRT–DT	127,001	126,300	990
13990	WIS	2,644,715	2,600,887	20,383
65143	WISC–TV	1,830,642	1,811,579	14,197
13960	WISE–TV	1,070,155	1,070,155	8,387
39269	WISH–TV	2,912,963	2,855,253	22,377
65680	WISN–TV	2,938,180	2,926,133	22,932
73083	WITF–TV	2,412,561	2,191,501	17,175
73107	WITI	3,117,342	3,107,791	24,356
594	WITN–TV	1,768,040	1,754,388	13,749
61005	WITV	1,081,393	1,081,393	8,475
7780	WIVB–TV	1,538,108	1,502,969	11,779
11260	WIVT	856,453	607,256	4,759
60571	WIWN*	3,338,845	3,323,941	26,050
62207	WIYC	526,556	525,826	4,121
73120	WJAC–TV	2,219,529	1,897,986	14,875
10259	WJAL*	8,750,706	8,446,074	66,192
50780	WJAR	6,537,858	6,428,263	50,378
35576	WJAX–TV	1,630,782	1,630,782	12,780
27140	WJBF	1,601,531	1,585,550	12,426
73123	WJBK	5,748,623	5,711,224	44,759
37174	WJCL	938,086	938,086	7,352
73130	WJCT	1,624,624	1,624,033	12,728
29719	WJEB–TV	1,607,510	1,607,510	12,598
65749	WJET–TV	747,431	717,721	5,625
7651	WJFB	1,744,291	1,736,932	13,612
49699	WJFW–TV	277,530	268,295	2,103
73136	WJHG–TV	864,121	859,823	6,738
57826	WJHL–TV*	2,037,793	1,428,213	11,193
68519	WJKT	654,460	653,378	5,121
1051	WJLA–TV*	8,750,706	8,447,643	66,204
86537	WJLP	21,384,863	21,119,366	165,512
9630	WJMN–TV	160,991	154,424	1,210
61008	WJPM–TV	623,965	623,813	4,889
58340	WJPX	3,254,481	3,008,658	19,594
21735	WJRT–TV	2,788,684	2,543,446	19,933
23918	WJSP–TV	4,225,860	4,188,428	32,825
41210	WJTC	1,347,474	1,346,205	10,550
48667	WJTV	987,206	980,717	7,686
73150	WJW	3,977,148	3,905,325	30,606
61007	WJWJ–TV	1,008,890	1,008,890	7,907
58342	WJWN–TV	1,962,885	1,690,961	4,706
53116	WJXT	1,608,682	1,608,682	12,607
11893	WJXX	1,618,191	1,617,272	12,675
32334	WJYS	9,647,321	9,647,299	75,606
25455	WJZ–TV*	9,253,891	8,902,229	69,767
73152	WJZY	4,432,745	4,301,117	33,708
64983	WKAQ–TV	3,697,088	3,287,110	21,407
6104	WKAR–TV	1,693,373	1,689,830	13,243
34171	WKAS	503,790	476,158	3,732
51570	WKBD–TV	5,065,617	5,065,350	39,697
73153	WKBN–TV	4,898,622	4,535,576	35,545

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
13929	WKBS–TV	831,411	682,182	5,346
74424	WKBT–DT	866,325	824,795	6,464
54176	WKBW–TV	2,033,929	1,942,743	15,225
53465	WKCF	4,032,154	4,031,823	31,597
73155	WKEF	3,623,762	3,619,081	28,363
34177	WKGB–TV	384,474	382,825	3,000
34196	WKHA	511,281	400,721	3,140
34207	WKLE	837,269	825,691	6,471
34212	WKMA–TV	454,447	453,482	3,554
71293	WKMG–TV	3,803,492	3,803,492	29,808
34195	WKMJ–TV	1,426,739	1,417,865	11,112
34202	WKMR	463,316	428,462	3,358
34174	WKMU	329,306	328,918	2,578
42061	WKNO	1,645,867	1,642,092	12,869
83931	WKNX–TV	1,684,178	1,459,493	11,438
34205	WKOH	550,854	547,801	4,293
67869	WKOI–TV	3,660,544	3,646,874	28,581
34211	WKON	905,003	895,953	7,022
18267	WKOP–TV	1,555,654	1,382,098	10,832
64545	WKOW	1,918,224	1,899,746	14,888
21432	WKPC–TV	1,489,989	1,481,948	11,614
65758	WKPD	242,844	241,796	1,895
34200	WKPI–TV	469,081	408,968	3,205
27504	WKPT–TV	1,131,213	887,806	6,958
58341	WKPV	1,132,932	879,902	4,706
11289	WKRC–TV	3,281,914	3,229,223	25,307
73187	WKRG–TV	1,526,600	1,526,075	11,960
73188	WKRN–TV	2,410,573	2,388,802	18,721
34222	WKSO–TV	586,871	573,741	4,496
40902	WKTC	1,386,422	1,385,850	10,861
60654	WKTV	1,573,503	1,342,387	10,520
73195	WKYC	4,154,903	4,099,508	32,128
24914	WKYT–TV	1,174,615	1,156,978	9,067
71861	WKYU–TV	411,448	409,310	3,208
34181	WKZT–TV	957,158	927,375	7,268
18819	WLAE–TV	1,397,967	1,397,967	10,956
36533	WLAJ	1,865,669	1,858,982	14,569
2710	WLAX	513,319	488,216	3,826
68542	WLBT	948,671	947,857	7,428
39644	WLBZ	373,129	364,346	2,855
69328	WLED–TV	338,110	159,958	1,254
63046	WLEF–TV	192,283	191,149	1,498
73203	WLEX–TV	969,543	964,107	7,556
37806	WLFB	808,036	680,534	5,333
37808	WLFG	1,614,321	1,282,063	10,048
73204	WLFI–TV	2,243,009	2,221,313	17,408
73205	WLFL	3,640,360	3,636,542	28,500
11113	WLGA	950,018	943,236	7,392
19777	WLII–DT	2,801,102	2,591,533	16,877
37503	WLIO *	1,067,232	1,050,170	8,230
38336	WLIW	14,117,756	13,993,724	109,669
27696	WLJC–TV *	1,401,072	1,281,256	10,041
71645	WLJT–DT	385,493	385,380	3,020
53939	WLKY	1,854,829	1,847,195	14,476
11033	WLLA	2,041,934	2,041,852	16,002
17076	WLMB	2,754,484	2,747,490	21,532
68518	WLMT	1,736,552	1,733,496	13,585
22591	WLNE–TV	5,705,441	5,630,394	44,125
74420	WLNS–TV	1,865,669	1,858,982	14,569
73206	WLNY–TV	7,501,199	7,415,578	58,116
84253	WLOO	913,960	912,674	7,153
56537	WLOS *	3,086,751	2,544,360	19,940
37732	WLOV–TV	609,526	607,780	4,763
13995	WLOX	1,182,149	1,170,659	9,174
38586	WLPB–TV	1,219,624	1,219,407	9,556
73189	WLPX–TV	1,021,171	921,974	7,226
66358	WLRN–TV	5,447,399	5,447,399	42,691
73226	WLS–TV	10,174,464	10,170,757	79,708
73230	WLTV–DT	5,427,398	5,427,398	42,535
37176	WLTX	1,580,677	1,578,645	12,372

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
37179	WLTZ	689,521	685,358	5,371
21259	WLUC–TV	92,246	85,393	669
4150	WLUK–TV	1,251,563	1,247,463	9,776
73238	WLVI	7,319,659	7,236,210	56,710
36989	WLVT–TV*	10,613,847	9,474,797	74,254
3978	WLWC	3,281,532	3,150,875	24,693
46979	WLWT	3,319,556	3,302,292	25,880
54452	WLXI	4,021,948	4,004,902	31,386
55350	WLYH	2,829,585	2,367,000	18,550
43192	WMAB–TV	407,794	401,487	3,146
43170	WMAE–TV	653,542	625,084	4,899
43197	WMAH–TV	1,257,393	1,256,995	9,851
43176	WMAO–TV	369,696	369,343	2,895
47905	WMAQ–TV	9,914,395	9,913,272	77,690
59442	WMAR–TV	9,203,498	9,065,260	71,044
43184	WMAU–TV	642,328	636,504	4,988
43193	WMAV–TV	1,008,339	1,008,208	7,901
43169	WMAW–TV	732,079	718,446	5,630
46991	WMAZ–TV	1,185,678	1,136,616	8,908
66398	WMBB	935,027	914,607	7,168
43952	WMBC–TV	18,706,132	18,458,331	144,658
42121	WMBD–TV	733,039	732,987	5,744
83969	WMBF–TV	445,363	445,363	3,490
60829	WMCF–TV	593,205	589,513	4,620
9739	WMCN–TV	10,379,045	9,982,651	78,234
19184	WMC–TV	2,047,403	2,043,125	16,012
189357	WMDE	6,384,827	6,257,910	49,043
73255	WMDN	278,227	278,018	2,179
16455	WMDT	731,931	731,931	5,736
39656	WMEA–TV	774,785	746,033	5,847
39648	WMEB–TV	511,761	494,574	3,876
70537	WMEC	217,940	217,671	1,706
39649	WMED–TV	30,488	29,577	232
39662	WMEM–TV	71,700	69,981	548
41893	WMFD–TV	1,561,367	1,324,244	10,378
41436	WMFP	5,792,048	5,564,295	43,607
61111	WMGM–TV	807,797	807,797	6,331
43847	WMGT–TV	601,894	601,309	4,712
73263	WMHT	1,622,458	1,472,559	11,540
68545	WMLW–TV	1,822,297	1,822,217	14,281
53819	WMOR–TV	5,386,517	5,386,358	42,213
81503	WMOW	121,150	106,115	832
65944	WMPB	6,489,215	6,375,063	49,961
43168	WMPN–TV	856,237	854,089	6,693
65942	WMPT	7,945,122	7,905,666	61,957
60827	WMPV–TV	1,395,611	1,395,036	10,933
10221	WMSN–TV	1,579,847	1,567,031	12,281
2174	WMTJ	3,143,148	2,846,339	18,537
6870	WMTV	1,548,616	1,545,459	12,112
73288	WMTW	1,940,292	1,658,816	13,000
23935	WMUM–TV	862,740	859,204	6,734
73292	WMUR–TV	5,192,179	5,003,980	39,216
42663	WMVS*	3,172,534	3,112,231	24,391
42665	WMVT*	3,172,534	3,112,231	24,391
81946	WMWC–TV	946,858	916,989	7,186
56548	WMYA–TV	1,577,439	1,516,026	11,881
74211	WMYD	5,750,989	5,750,873	45,070
20624	WMYT–TV	4,432,745	4,301,117	33,708
25544	WMYV	3,808,852	3,786,057	29,671
73310	WNAB	2,072,197	2,059,474	16,140
73311	WNAC–TV	7,310,183	6,959,064	54,538
47535	WNBC	20,072,714	19,699,252	154,383
83965	WNBW–DT	633,243	631,197	4,947
72307	WNCF	667,683	665,950	5,219
50782	WNCN*	3,795,494	3,783,131	29,648
57838	WNCT–TV	1,933,527	1,879,655	14,731
41674	WNDU–TV	1,807,909	1,783,617	13,978
28462	WNDY–TV	2,912,963	2,855,253	22,377
71928	WNED–TV	1,364,333	1,349,085	10,573
60931	WNEH	1,261,482	1,255,218	9,837

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
41221	WNEM–TV	1,617,082	1,612,561	12,638
49439	WNEO	3,151,964	3,105,545	24,338
73318	WNEP–TV	3,131,848	2,484,949	19,475
18795	WNET	20,826,756	20,387,649	159,778
51864	WNEU	3,471,700	3,354,177	26,287
23942	WNGH–TV	3,715,479	3,482,438	27,292
67802	WNIN	883,322	865,128	6,780
41671	WNIT	1,298,159	1,298,159	10,174
48457	WNJB*	20,787,272	20,036,393	157,025
48477	WNJN*	20,787,272	20,036,393	157,025
48481	WNJS	7,211,292	7,176,711	56,244
48465	WNJT	7,211,292	7,176,711	56,244
73333	WNJU	21,952,082	21,399,204	167,706
73336	WNJX–TV	1,585,248	1,383,235	1,199
61217	WNKY	385,619	383,911	3,009
71905	WNLO	1,538,108	1,502,969	11,779
4318	WNMU	181,730	177,763	1,393
73344	WNNE	792,551	676,539	5,302
54280	WNOL–TV	1,632,389	1,632,389	12,793
71676	WNPB–TV	1,578,317	1,446,630	11,337
62137	WNPI–DT	167,931	161,748	1,268
41398	WNPT	2,260,463	2,227,570	17,457
28468	WNPX–TV	2,216,131	2,209,662	17,317
61009	WNSC–TV	2,072,821	2,067,933	16,206
61010	WNTV	2,419,841	2,211,019	17,328
16539	WNTZ–TV	344,704	343,849	2,695
7933	WNUV	9,098,694	8,906,508	69,800
9999	WNVC	723,698	490,045	3,840
10019	WNVT	1,582,094	1,581,725	12,396
73354	WNWO–TV	2,232,660	2,232,660	17,497
136751	WNYA	1,540,430	1,406,032	11,019
30303	WNYB*	1,785,269	1,756,096	13,763
6048	WNYE–TV	19,185,983	19,015,910	149,028
34329	WNYI	1,627,542	1,338,811	10,492
67784	WNYO–TV	1,539,525	1,499,591	11,752
58725	WNYS–TV	1,690,696	1,445,505	11,328
73363	WNYT*	1,679,494	1,516,775	11,887
22206	WNYW	20,075,874	19,753,060	154,805
69618	WOAI–TV	2,525,811	2,513,887	19,701
66804	WOAY–TV	569,330	416,995	3,268
41225	WOFL	3,941,895	3,938,046	30,862
70651	WOGX	1,112,408	1,112,408	8,718
8661	WOI–DT*	1,173,757	1,170,432	9,173
39746	WOIO	3,821,233	3,745,335	29,352
71725	WOLE–DT*[1]	2,503,603	947,174	7,423
73375	WOLF–TV	3,006,606	2,425,396	19,008
60963	WOLO–TV	2,635,115	2,590,158	20,299
36838	WOOD–TV	2,507,053	2,501,084	19,601
67602	WOPX–TV	3,826,498	3,826,259	29,986
64865	WORA–TV	2,733,629	2,586,149	2,893
73901	WORO–DT*	3,243,301	3,022,553	20,711
60357	WOST	1,193,381	1,027,391	6,691
66185	WOSU–TV	2,649,515	2,617,817	20,516
131	WOTF–TV	3,288,537	3,288,535	25,772
10212	WOTV	2,277,566	2,277,258	17,847
50147	WOUB–TV	756,762	734,988	5,760
50141	WOUC–TV	1,713,515	1,649,853	12,930
23342	WOWK–TV*	1,159,175	1,082,354	8,482
65528	WOWT	1,380,979	1,377,287	10,794
31570	WPAN	637,347	637,347	4,995
4190	WPBA	5,217,180	5,200,958	40,760
51988	WPBF	3,190,307	3,186,405	24,972
21253	WPBN–TV	411,213	394,778	3,094
62136	WPBS–DT	338,448	301,692	2,364
13456	WPBT	5,416,604	5,416,604	42,450
13924	WPCB–TV	2,934,614	2,800,516	21,948
64033	WPCH–TV	5,948,778	5,874,163	46,036
4354	WPCT	195,270	194,869	1,527
69880	WPCW	3,393,365	3,188,441	24,988
17012	WPDE–TV	1,764,645	1,762,758	13,815

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
52527	WPEC	5,788,448	5,788,448	45,364
84088	WPFO	1,329,690	1,209,873	9,482
54728	WPGA–TV	559,495	559,004	4,381
60820	WPGD–TV	2,355,629	2,343,715	18,368
73875	WPGH–TV	3,132,507	3,007,511	23,570
2942	WPGX	425,098	422,872	3,314
73879	WPHL–TV	10,421,216	10,246,856	80,305
73881	WPIX	20,638,932	20,213,158	158,411
53113	WPLG	5,587,129	5,587,129	43,786
11906	WPMI–TV	1,467,869	1,467,462	11,500
10213	WPMT	2,412,561	2,191,501	17,175
18798	WPNE–TV	1,132,868	1,132,699	8,877
73907	WPNT	3,130,920	3,010,828	23,596
28480	WPPT *	10,613,847	9,474,797	74,254
51984	WPPX–TV	8,206,117	7,995,941	62,664
47404	WPRI–TV	7,254,721	6,990,606	54,785
51991	WPSD–TV	883,812	878,287	6,883
12499	WPSG	10,232,988	9,925,334	77,785
66219	WPSU–TV	1,055,133	868,013	6,803
73905	WPTA	1,099,180	1,099,180	8,614
25067	WPTD	3,423,417	3,415,232	26,765
25065	WPTO	2,912,159	2,893,581	22,677
59443	WPTV–TV	5,840,102	5,840,102	45,769
57476	WPTZ	792,551	676,539	5,302
8616	WPVI–TV *	11,491,587	11,302,701	88,579
48772	WPWR–TV	9,957,301	9,954,828	78,016
51969	WPXA–TV	6,587,205	6,458,510	50,615
71236	WPXC–TV	1,561,014	1,561,014	12,234
5800	WPXD–TV	5,133,364	5,133,257	40,229
37104	WPXE–TV	3,163,550	3,160,601	24,770
48406	WPXG–TV	2,577,848	2,512,150	19,688
73312	WPXH–TV	1,495,968	1,423,805	11,158
73910	WPXI	3,300,896	3,197,864	25,062
2325	WPXJ–TV	2,358,750	2,294,833	17,985
52628	WPXK–TV	1,801,997	1,577,806	12,365
21729	WPXL–TV	1,566,829	1,566,829	12,279
48608	WPXM–TV	5,153,621	5,153,621	40,389
73356	WPXN–TV	20,465,198	20,092,448	157,465
27290	WPXP–TV	5,565,072	5,565,072	43,613
50063	WPXQ–TV	3,281,532	3,150,875	24,693
70251	WPXR–TV	1,375,640	1,200,331	9,407
40861	WPXS	1,152,104	1,145,695	8,979
53065	WPXT	760,491	735,051	5,761
37971	WPXU–TV	690,613	690,613	5,412
67077	WPXV–TV	1,905,128	1,905,128	14,930
74091	WPXW–TV	8,091,469	8,044,165	63,042
21726	WPXX–TV	1,562,675	1,560,834	12,232
73319	WQAD–TV	1,079,594	1,066,743	8,360
65130	WQCW	1,319,392	1,249,533	9,793
71561	WQEC	183,969	183,690	1,440
41315	WQED	3,529,305	3,426,684	26,855
3255	WQHA	1,052,107	879,558	5,728
60556	WQHS–DT	3,996,567	3,952,672	30,977
53716	WQLN	602,212	571,790	4,481
52075	WQMY	410,269	254,586	1,995
64550	WQOW	369,066	358,576	2,810
5468	WQPT–TV	595,685	595,437	4,666
64690	WQPX–TV	1,644,283	1,212,587	9,503
52408	WQRF–TV	1,326,695	1,305,762	10,233
2175	WQTO	2,864,201	1,923,424	12,526
8688	WRAL–TV	3,643,511	3,639,448	28,522
10133	WRAY–TV	4,021,948	4,004,902	31,386
64611	WRAZ	3,605,228	3,601,029	28,221
136749	WRBJ–TV	1,030,831	1,028,010	8,057
3359	WRBL	1,493,140	1,461,459	11,453
57221	WRBU	2,737,188	2,734,806	21,433
54940	WRBW	4,025,123	4,023,804	31,535
59137	WRCB	1,587,742	1,363,582	10,686
47904	WRC–TV	8,188,601	8,146,696	63,846
54963	WRDC	3,624,288	3,620,526	28,374

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
55454	WRDQ	3,931,023	3,931,023	30,807
73937	WRDW–TV	1,564,584	1,533,682	12,019
66174	WREG–TV	1,642,307	1,638,585	12,842
61011	WRET–TV	2,419,841	2,211,019	17,328
73940	WREX	2,303,027	2,047,951	16,050
54443	WRFB	2,674,527	2,377,106	15,481
73942	WRGB *	1,757,575	1,645,483	12,896
411	WRGT–TV	3,252,046	3,219,309	25,230
74416	WRIC–TV	1,996,265	1,939,664	15,201
61012	WRJA–TV	1,127,088	1,119,936	8,777
412	WRLH–TV	2,017,508	1,959,111	15,354
61013	WRLK–TV	1,229,094	1,228,616	9,629
43870	WRLM	3,919,602	3,892,146	30,503
74156	WRNN–TV	19,853,836	19,615,370	153,726
73964	WROC–TV	1,203,412	1,185,203	9,288
159007	WRPT	110,009	109,937	862
20590	WRPX–TV	2,637,949	2,634,141	20,644
62009	WRSP–TV	904,190	902,682	7,074
40877	WRTV	2,919,683	2,895,164	22,689
15320	WRUA	2,905,193	2,552,782	16,625
71580	WRXY–TV	1,633,655	1,633,655	12,803
48662	WSAV–TV	1,000,315	1,000,309	7,839
6867	WSAW–TV	652,442	646,386	5,066
36912	WSAZ–TV	1,184,629	1,119,859	8,776
56092	WSBE–TV	4,627,829	4,531,067	35,510
73982	WSBK–TV	7,161,406	7,095,363	55,606
72053	WSBS–TV	42,952	42,952	337
73983	WSBT–TV	1,691,194	1,682,136	13,183
23960	WSB–TV	5,893,810	5,818,626	45,601
69446	WSCG	867,516	867,490	6,799
64971	WSCV	5,465,435	5,465,435	42,833
70536	WSEC	522,349	521,730	4,089
49711	WSEE–TV	613,176	595,476	4,667
21258	WSES	1,548,117	1,513,982	11,865
73988	WSET–TV	1,569,722	1,323,180	10,370
13993	WSFA	1,168,636	1,133,724	8,885
11118	WSFJ–TV	1,675,987	1,667,150	13,065
10203	WSFL–TV	5,344,129	5,344,129	41,882
72871	WSFX–TV	928,247	928,247	7,275
73999	WSIL–TV	672,560	669,176	5,244
4297	WSIU–TV *	1,019,939	937,070	7,344
74007	WSJV	1,522,499	1,522,499	11,932
78908	WSKA	546,588	431,354	3,381
74034	WSKG–TV	892,439	624,282	4,892
76324	WSKY–TV	1,934,585	1,934,519	15,161
57840	WSLS–TV	1,447,286	1,277,753	10,014
21737	WSMH	2,339,224	2,327,660	18,242
41232	WSMV–TV	2,447,769	2,404,766	18,846
70119	WSNS–TV	9,914,395	9,913,272	77,690
74070	WSOC–TV	3,706,808	3,638,832	28,518
66391	WSPA–TV	3,393,072	3,237,713	25,374
64352	WSPX–TV	1,298,295	1,174,763	9,207
17611	WSRE	1,355,168	1,354,307	10,614
63867	WSST–TV	331,907	331,601	2,599
60341	WSTE–DT	3,723,967	3,631,985	23,653
21252	WSTM–TV	1,458,931	1,382,417	10,834
11204	WSTR–TV	3,252,460	3,243,267	25,417
19776	WSUR–DT *[2]	3,714,790	947,174	7,423
2370	WSVI	50,601	50,601	397
63840	WSVN	5,588,748	5,588,748	43,799
73374	WSWB	1,530,002	1,102,316	8,639
28155	WSWG	381,004	380,910	2,985
71680	WSWP–TV	858,726	659,416	5,168
74094	WSYM–TV	1,516,677	1,516,390	11,884
73113	WSYR–TV	1,329,933	1,243,035	9,742
40758	WSYT	1,878,638	1,640,666	12,858
56549	WSYX	2,635,937	2,584,043	20,251
65681	WTAE–TV	2,995,755	2,860,979	22,421
23341	WTAJ–TV	1,187,718	948,598	7,434
4685	WTAP–TV	472,761	451,414	3,538

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
416	WTAT–TV	1,153,279	1,153,279	9,038
67993	WTBY–TV	15,858,470	15,766,438	123,562
29715	WTCE–TV	2,620,599	2,620,599	20,538
65667	WTCI	1,204,613	1,099,395	8,616
67786	WTCT	584,661	584,006	4,577
28954	WTCV	3,254,481	3,008,658	19,594
74422	WTEN	1,902,431	1,613,747	12,647
9881	WTGL	3,772,425	3,772,425	29,564
27245	WTGS	967,792	967,630	7,583
70655	WTHI–TV	928,934	886,846	6,950
70162	WTHR*	2,949,339	2,901,633	22,740
147	WTIC–TV	5,318,753	4,707,697	36,894
26681	WTIN–TV	3,714,547	3,487,634	1,199
66536	WTIU	1,131,685	1,131,161	8,865
1002	WTJP–TV	1,947,743	1,907,300	14,948
4593	WTJR	334,527	334,221	2,619
70287	WTJX–TV	135,017	121,498	952
47401	WTKR	2,142,272	2,142,084	16,788
82735	WTLF	349,696	349,691	2,741
23486	WTLH	1,038,086	1,038,086	8,135
67781	WTLJ	1,622,365	1,621,227	12,706
65046	WTLV	1,757,600	1,739,021	13,629
1222	WTLW	1,646,714	1,644,206	12,886
74098	WTMJ–TV	3,010,678	2,995,959	23,479
74109	WTNH	7,845,782	7,332,431	57,464
19200	WTNZ	1,699,427	1,513,754	11,863
590	WTOC–TV	993,098	992,658	7,779
74112	WTOG	4,796,964	4,796,188	37,588
4686	WTOK–TV	410,134	404,555	3,170
13992	WTOL	4,184,020	4,174,198	32,713
21254	WTOM–TV	83,379	81,092	636
74122	WTOV–TV	3,892,886	3,619,899	28,369
82574	WTPC–TV*	2,049,246	2,042,851	16,010
86496	WTPX–TV	255,972	255,791	2,005
6869	WTRF–TV	2,941,511	2,565,375	20,105
67798	WTSF	593,934	552,040	4,326
11290	WTSP*	5,511,840	5,494,925	43,064
4108	WTTA	5,450,070	5,446,811	42,687
74137	WTTE	2,636,341	2,591,715	20,311
22207	WTTG	8,070,491	8,015,328	62,816
56526	WTTK	2,817,698	2,794,018	21,897
74138	WTTO	1,817,151	1,786,516	14,001
56523	WTTV	2,362,145	2,359,408	18,491
10802	WTTW	9,729,982	9,729,634	76,251
74148	WTVA	717,035	709,726	5,562
22590	WTVC	1,579,628	1,366,976	10,713
8617	WTVD*	3,793,909	3,778,802	29,614
55305	WTVE	5,156,905	5,152,997	40,384
36504	WTVF	2,416,110	2,397,634	18,790
74150	WTVG	4,274,274	4,263,894	33,416
74151	WTVH	1,350,223	1,275,171	9,994
10645	WTVI	2,853,540	2,824,869	22,138
63154	WTVJ	5,458,451	5,458,451	42,778
595	WTVM	1,498,667	1,405,957	11,018
72945	WTVO	1,409,708	1,398,825	10,963
28311	WTVP	679,017	678,672	5,319
51597	WTVQ–DT	989,180	982,298	7,698
57832	WTVR–TV	1,808,516	1,802,164	14,124
16817	WTVS	5,511,639	5,511,255	43,192
68569	WTVT	5,475,385	5,462,416	42,809
3661	WTVW	791,430	789,720	6,189
35575	WTVX	3,157,609	3,157,609	24,746
4152	WTVY	974,532	971,173	7,611
40759	WTVZ–TV	2,156,534	2,156,346	16,899
66908	WTWC–TV	1,032,942	1,032,942	8,095
20426	WTWO	737,757	731,769	5,735
81692	WTWV	1,527,511	1,526,625	11,964
51568	WTXF–TV	10,784,256	10,492,549	82,230
41065	WTXL–TV	1,054,514	1,054,322	8,263
8532	WUAB	3,821,233	3,745,335	29,352

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
12855	WUCF–TV	3,772,425	3,772,425	29,564
36395	WUCW	3,664,480	3,657,236	28,662
69440	WUFT	1,372,142	1,372,142	10,753
413	WUHF	1,152,580	1,147,972	8,997
8156	WUJA	2,638,361	2,379,555	15,497
69080	WUNC–TV	4,021,948	4,004,902	31,386
69292	WUND–TV	1,506,640	1,506,640	11,808
69114	WUNE–TV	1,931,274	1,527,025	11,967
69300	WUNF–TV	2,447,306	2,066,422	16,195
69124	WUNG–TV	3,267,425	3,253,352	25,497
60551	WUNI	7,209,571	7,084,349	55,520
69332	WUNJ–TV	1,081,274	1,081,274	8,474
69149	WUNK–TV	2,018,916	2,013,516	15,780
69360	WUNL–TV	2,614,031	2,545,330	19,948
69444	WUNM–TV	1,029,109	1,029,109	8,065
69397	WUNP–TV	1,018,414	1,009,833	7,914
69416	WUNU	1,120,792	1,117,140	8,755
83822	WUNW	1,109,237	570,072	4,468
6900	WUPA	5,946,477	5,865,122	45,965
13938	WUPL	1,632,100	1,632,100	12,791
10897	WUPV	1,933,664	1,914,643	15,005
19190	WUPW	2,074,890	2,073,548	16,250
23128	WUPX–TV	1,102,435	1,089,118	8,535
65593	WUSA*	8,750,706	8,446,074	66,192
4301	WUSI–TV	304,747	304,747	2,388
60552	WUTB	8,509,757	8,339,882	65,360
30577	WUTF–TV	8,557,497	8,242,833	64,599
57837	WUTR	526,114	481,957	3,777
415	WUTV	1,405,230	1,380,902	10,822
16517	WUVC–DT	3,768,817	3,748,841	29,380
48813	WUVG–DT	6,029,495	5,965,975	46,755
3072	WUVN	1,233,568	1,157,140	9,069
60560	WUVP–DT	10,421,216	10,246,856	80,305
9971	WUXP–TV	2,316,872	2,305,293	18,067
417	WVAH–TV	1,373,707	1,300,402	10,191
23947	WVAN–TV	979,764	978,920	7,672
65387	WVBT	1,848,277	1,848,277	14,485
72342	WVCY–TV	2,543,642	2,542,235	19,923
60559	WVEA–TV	4,283,915	4,283,854	33,573
74167	WVEC*	2,096,709	2,090,875	16,386
5802	WVEN–TV	3,607,540	3,607,540	28,272
61573	WVEO	1,153,382	916,310	2,353
69946	WVER	760,072	579,703	4,543
10976	WVFX	731,193	609,763	4,779
47929	WVIA–TV	3,131,848	2,484,949	19,475
3667	WVII–TV	368,022	346,874	2,718
70309	WVIR–TV	1,944,353	1,801,429	14,118
74170	WVIT	5,846,093	5,357,639	41,988
18753	WVIZ	3,695,223	3,689,173	28,912
70021	WVLA–TV	1,897,179	1,897,007	14,867
81750	WVLR	1,412,728	1,292,471	10,129
35908	WVLT–TV	1,888,607	1,633,633	12,803
74169	WVNS–TV	911,630	606,820	4,756
11259	WVNY	721,176	620,257	4,861
29000	WVOZ–TV	1,132,932	879,902	2,353
71657	WVPB–TV	780,268	752,747	5,899
60111	WVPT*	756,714	632,580	4,958
70491	WVPX–TV	4,147,298	4,114,920	32,249
66378	WVPY*	756,202	632,155	4,954
67190	WVSN	2,948,832	2,572,001	16,750
69943	WVTA	760,072	579,703	4,543
69940	WVTB	454,244	258,422	2,025
74173	WVTM–TV	1,876,825	1,790,198	14,030
74174	WVTV	2,999,694	2,990,991	23,440
77496	WVUA	2,209,921	2,160,101	16,929
4149	WVUE–DT	1,658,125	1,658,125	12,995
4329	WVUT	273,293	273,219	2,141
74176	WVVA	1,035,752	693,707	5,437
3113	WVXF	85,191	78,556	616
12033	WWAY	1,206,281	1,206,281	9,454

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
30833	WWBT	1,911,854	1,872,305	14,673
20295	WWCP–TV	2,811,278	2,548,691	19,974
24812	WWCW	1,390,985	1,212,308	9,501
23671	WWDP	5,792,048	5,564,295	43,607
21158	WWHO	2,879,726	2,805,564	21,987
14682	WWJE–DT	7,209,571	7,084,349	55,520
72123	WWJ–TV	5,374,064	5,373,712	42,114
166512	WWJX	518,866	518,846	4,066
6868	WWLP	3,838,272	3,077,800	24,121
74192	WWL–TV	1,756,442	1,756,442	13,765
3133	WWMB	1,460,406	1,458,374	11,429
74195	WWMT	2,460,942	2,455,432	19,243
68851	WWNY–TV	365,677	341,029	2,673
74197	WWOR–TV	19,853,836	19,615,370	153,726
65943	WWPB	2,015,352	1,691,003	13,252
23264	WWPX–TV	3,892,904	3,196,922	25,054
68547	WWRS–TV	2,235,958	2,212,123	17,336
61251	WWSB	3,340,133	3,340,133	26,177
23142	WWSI	11,269,831	11,098,540	86,979
16747	WWTI	196,531	190,097	1,490
998	WWTO–TV	5,541,816	5,541,816	43,431
26994	WWTV	1,034,174	1,022,322	8,012
84214	WWTW	1,527,511	1,526,625	11,964
26993	WWUP–TV	116,638	110,592	867
23338	WXBU	4,030,693	3,538,096	27,728
61504	WXCW	1,749,847	1,749,847	13,714
61084	WXEL–TV	5,416,604	5,416,604	42,450
60539	WXFT–DT	10,174,464	10,170,757	79,708
23929	WXGA–TV	608,494	606,801	4,755
51163	WXIA–TV	6,179,680	6,035,828	47,303
53921	WXII–TV	3,630,551	3,299,114	25,855
146	WXIN	2,721,639	2,699,366	21,155
39738	WXIX–TV	2,825,570	2,797,385	21,923
414	WXLV–TV	4,362,761	4,333,737	33,963
68433	WXMI	1,988,970	1,988,589	15,585
64549	WXOW	425,378	413,264	3,239
6601	WXPX–TV	4,566,037	4,564,088	35,769
74215	WXTV–DT	19,992,096	19,643,518	153,946
12472	WXTX	699,095	694,837	5,445
11970	WXXA–TV *	1,680,670	1,546,103	12,117
57274	WXXI–TV	1,178,402	1,163,073	9,115
53517	WXXV–TV	1,201,440	1,199,901	9,404
10267	WXYZ–TV	5,591,434	5,590,748	43,815
12279	WYCC	9,729,982	9,729,634	76,251
77515	WYCI	35,873	26,508	208
70149	WYCW	3,393,072	3,237,713	25,374
62219	WYDC	393,843	262,013	2,053
18783	WYDN	2,577,848	2,512,150	19,688
35582	WYDO	1,097,745	1,097,745	8,603
25090	WYES–TV	1,872,245	1,872,059	14,671
53905	WYFF	2,626,363	2,416,551	18,939
49803	WYIN	6,956,141	6,956,141	54,515
24915	WYMT–TV	1,180,276	863,881	6,770
17010	WYOU *	2,879,196	2,221,179	17,407
77789	WYOW	91,233	90,799	712
13933	WYPX–TV	1,529,500	1,413,583	11,078
4693	WYTV	4,898,622	4,535,576	35,545
5875	WYZZ–TV	1,042,140	1,036,721	8,125
15507	WZBJ	1,606,844	1,439,716	11,283
28119	WZDX	1,557,490	1,452,851	11,386
70493	WZME	5,996,408	5,544,708	43,454
81448	WZMQ	73,423	72,945	572
71871	WZPX–TV	2,094,029	2,093,653	16,408
136750	WZRB	952,279	951,693	7,458
418	WZTV	2,311,143	2,299,730	18,023
83270	WZVI	76,992	75,863	595
19183	WZVN–TV	1,916,098	1,916,098	15,016

TABLE 8—FY 2020 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id. No.	Call sign	Service area population	Terrain-Ltd population	FY 2020 Terrain-Ltd fee amount
49713	WZZM	1,574,546	1,548,835	12,138

Note: The list of call signs above include all feeable and exempt entities. It is the responsibility of licensees to inform the Commission of any status changes. As stated in the *FY 2020 2020 Regulatory Fee Reform Order and FY 2020 NPRM,* the fee of full-power television stations in Puerto Rico have been adjusted to reflect losses in population on the island since the 2010 U.S. Census.

* The call signs with an (*) denote VHF stations licensed with a power level that exceeds the maximum based on the maximum power level specified for channels 2–6 in § 73.622(f)(6) and for channels 7–13 in § 73.622(f)(7). The population counts have been adjusted accordingly.

[1] Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of $24,300.

[2] Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of $24,300.

[3] Call signs WTCV, WVOZ–TV, and WVEO–TV are stations in Puerto Rico that are linked together with a total fee of $24,300.

[4] Call signs WAPA–TV, WTIN–TV, and WNJX–TV are stations in Puerto Rico that are linked together with a total fee of $24,300.

Table 9—FY 2019 Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.19.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	690.
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	690.
AM Radio Construction Permits	595.
FM Radio Construction Permits	1,000.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	.007224, See Appendix J for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees*
Construction Permits	4,450.
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	345.
CARS (47 CFR part 78)	1,225.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.86.
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.60.
Interstate Telecommunication Service Providers (per revenue dollar)	.00317.
Toll Free (per toll free subscriber) (47 CFR 52.101(f) of the rules)	.12.
Earth Stations (47 CFR part 25)	425.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	159,625.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	154,875.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	121.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2019 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<=25,000	$950	$685	$595	$655	$1,000	$1,200
25,001–75,000	1,425	1,000	895	985	1,575	1,800
75,001–150,000	2,150	1,550	1,350	1,475	2,375	2,700
150,001–500,000	3,200	2,325	2,000	2,225	3,550	4,050
500,001–1,200,000	4,800	3,475	3,000	3,325	5,325	6,075
1,200,001–3,000,000	7,225	5,200	4,525	4,975	7,975	9,125
3,000,001–6,000,000	10,825	7,800	6,775	7,450	11,950	13,675
>6,000,000	16,225	11,700	10,175	11,200	17,950	20,500

FY 2019 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2018)	FY 2019 regulatory fees
Less than 50 Gbps	$12,575
50 Gbps or greater, but less than 250 Gbps	25,150
250 Gbps or greater, but less than 1,000 Gbps	50,300
1,000 Gbps or greater, but less than 4,000 Gbps	100,600
4,000 Gbps or greater	201,225

V. Final Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *FY 2020 NPRM.* The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

A. Need for, and Objectives of, the Report and Order

86. In this Report and Order we adopt our proposal in the *FY 2020 NPRM* on collecting $339,000,000 in regulatory fees for FY 2020, pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act). These regulatory fees will be due in September 2020. Under section 9 of the Communications Act, regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities in an amount that can be reasonably expected to equal the amount of the Commission's annual appropriation. This Report and Order adopts the regulatory fees proposed in the *FY 2020 NPRM,* with some minor changes.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

87. None.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

88. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

89. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

90. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, most firms in this industry can be considered small.

91. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

92. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

93. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that most Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other

Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

94. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that most interexchange service providers are small entities that may be affected by the rules adopted.

95. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. All 193 carriers have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

96. *Local Resellers.* Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of this total, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

97. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

98. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

99. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

100. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that most firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's Media Access Pro Television Database, on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73%) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

101. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

102. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 396. These stations are non-profit, and therefore considered to be small entities. There are also 2,528 low power television stations, including Class A stations (LPTV). Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

103. *Radio Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category, which is: Such firms having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year. According to Commission staff review of BIA Advisory Services, LLC's Media Access Pro Radio Database, on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, most such entities are small entities.

104. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

105. *Cable Television and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry of $41.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year. Of this total, 319 operated with annual receipts of less than $25 million. Thus under this size standard, most firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

106. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. The Commission's industry data indicate that there are currently 4,160 active cable systems in the United States. Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,160 cable systems nationwide. Thus, under this standard as well, we estimate that most cable systems are small entities.

107. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 53 million cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

108. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or

providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1500 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that most wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

109. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $35 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, most ''All Other Telecommunications'' firms potentially affected by the rules adopted can be considered small.

110. *RespOrgs.* RespOrgs, *i.e.,* Responsible Organizations, are entities chosen by toll-free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber. Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

111. *Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers and Wireless Telecommunications Carriers (except satellite).

112. The U.S. Census Bureau defines *Wired Telecommunications Carriers* as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees. Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

113. The U.S. Census Bureau defines *Wireless Telecommunications Carriers (except satellite)* as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees. Based on that data, we conclude that most Carrier RespOrgs that operated with wireless-based technology are small.

114. *Non-Carrier RespOrgs.* Neither the Commission, the Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related To Advertising'' and ''Other Management Consulting Services.''

115. The U.S. Census defines *Other Services Related to Advertising* as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services. The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less. Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10 million. Based on that data we conclude that most Non-Carrier RespOrgs who provide TFN-related advertising services are small.

116. The U.S. Census defines *Other Management Consulting Services* as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA has established a size standard for this industry of $15 million dollars or less. Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts. Based on this data, we conclude that most non-carrier RespOrgs who provide TFN-related management consulting services are small.

117. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

118. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

119. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

120. This Report and Order adopts the proposals in the *Notice* to collect $339,000,000 in regulatory fees for FY 2020, as detailed in the fee schedules in Table 5, including the following: (i) An increase in the DBS fee rate to 72 cents per subscriber, per year, based on the Media Bureau FTEs devoted to issues that include DBS. The two DBS providers, AT&T and DISH are not small entities. (ii) The implementation of the new methodology for calculating the full power broadcast television regulatory fees based on the actual population, which the Commission initially adopted in FY 2018 and was transitioning in over two years. Basing the fee on actual population should offer relief to smaller broadcasters, which may include small entities. (iii) An exemption from regulatory fees for non-U.S. licensed space stations that are listed as a point of communication on earth stations onboard vessels (ESV) licenses if the ESV license clearly limits U.S. licensed ESV terminals' access to these non-U.S. licensed space stations to situations in which these terminals are in foreign territories and/or international waters and the license does not otherwise allow the non-U.S. licensed space station access to the U.S. market. This exemption could benefit non-U.S. licensed space stations that are small entities. (iv) The revision of the allocation of IBC fees between submarine cable and terrestrial and satellite IBCs from 87.6%-12.4% to 95%-5%. Any terrestrial or satellite operator with IBCs will benefit. (v) The Report and Order notes that the Media Bureau has granted waivers to allow VHF stations that demonstrate signal disruptions to exceed the maximum power level specified for channels 2–6 in § 73.622(f)(6) and for channels 7–13 in § 73.622(f)(7) and, accordingly, will assess the regulatory fees for those VHF stations that are licensed with a power level that exceeds the maximum based on the maximum power level specified for channels 2–6 in § 73.622(f)(6) and for channels 7–13 in § 73.622(f)(7). To the extent that VHF stations in these circumstances are small entities, this could provide regulatory fee relief. (vi) The adopts two targeted measures to provide relief to Puerto Rico broadcasters. *First,* we account for the objectively measurable reduction in population by reducing the population counts used in TVStudy by 16.9%, which reflects the decline between the last census in 2010 and the current population estimate. *Second,* we limit the market served by a primary television stations and commonly owned satellite broadcast stations in Puerto Rico to no more than 3.10 million people, the latest population estimate. Thus, the fee for television broadcasters and commonly owned satellites, using the proposed population fee of $.007837, would not exceed $24,300. (vii) The Order adopts streamlined processes for fee payors that have experienced financial hardship as a result of the Covid-19 pandemic to seek relief and will provide for lowered interest charges on installment payment plans. This could benefit small businesses that experienced financial hardship due to the Covid-19 pandemic.

121. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. For example, the de minimis threshold is $1,000, which will impact many small entities that pay regulatory fees. This de minimis threshold will relieve regulatees both financially and administratively. Regulatees may also seek waivers or other relief on the basis of financial hardship. *See* 47 CFR 1.1166.

VI. Ordering Clauses

122. Accordingly, *it is ordered* that, pursuant to section 9(a), (b), (e), (f), and (g) of the Communications Act of 1934, as amended, 47 U.S.C. 159(a), (b), (e), (f), and (g), this Report and Order *is hereby adopted.*

123. *It is further ordered* that the Report and Order *shall be effective* upon publication in the **Federal Register**.

124. *It is further ordered* that the FY 2020 section 9 regulatory fees assessment requirements and the rules set forth in the Final Rules *are adopted* as specified herein.

125. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in this rulemaking, to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission 47 CFR part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455; Sec. 102(c), Div. P, Pub. L. 115–141, 132 Stat. 1084, unless otherwise noted.

■ 2. Section 1.1151 is revised to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in section 9 of the Communications Act, as amended by sections 101–103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 115–141, 132 Stat. 1084), 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees to recover the cost of carrying out the functions of the Commission.

■ 3. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

TABLE 1 TO § 1.1152

Exclusive use services (per license)	Fee amount
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90)	
(a) New, Renew/Mod (FCC 601 & 159)	$25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
220 MHz Nationwide	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
2. Microwave (47 CFR part 101) (Private)	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
3. Shared Use Services	
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)	
(a) New, Renew/Mod (FCC 601 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(c) Renewal Only (FCC 601 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00
Rural Radio (47 CFR part 22)	
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(b) Renewal, Minor Renew/Mod (Electronic Filing)	10.00
Marine Coast	
(a) New Renewal/Mod (FCC 601 & 159)	40.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	40.00
(c) Renewal Only (FCC 601 & 159)	40.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00
Aviation Ground	
(a) New, Renewal/Mod (FCC 601 & 159)	20.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	20.00
(c) Renewal Only (FCC 601 & 159)	20.00
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	20.00
Marine Ship	
(a) New, Renewal/Mod (FCC 605 & 159)	15.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	15.00
(c) Renewal Only (FCC 605 & 159)	15.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	15.00
Aviation Aircraft	
(a) New, Renew/Mod (FCC 605 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00
(c) Renewal Only (FCC 605 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00
4. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[1] .17
5. CMRS Messaging Services (per unit) (FCC 159)	[2] .08
6. Broadband Radio Service (formerly MMDS and MDS)	560
7. Local Multipoint Distribution Service	560

[1] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 4. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

TABLE 1 TO § 1.1153

Radio [AM and FM] (47 CFR part 73)	Fee amount
1. AM Class A	
<=25,000 population	$975
25,001–75,000 population	1,475
75,001–150,000 population	2,200
150,001–500,000 population	3,300
500,001–1,200,000 population	4,925
1,200,001–3,000,000 population	7,400
3,000,001–6,000,000 population	11,100

TABLE 1 TO § 1.1153—Continued

Radio [AM and FM] (47 CFR part 73)	Fee amount
>6,000,000 population	16,675
2. AM Class B	
<=25,000 population	700
25,001–75,000 population	1,050
75,001–150,000 population	1,575
150,001–500,000 population	2,375
500,001–1,200,000 population	3,550
1,200,001–3,000,000 population	5,325
3,000,001–6,000,000 population	7,975
>6,000,000 population	11,975
3. AM Class C	
<=25,000 population	610
25,001–75,000 population	915
75,001–150,000 population	1,375
150,001–500,000 population	2,050
500,001–1,200,000 population	3,075
1,200,001–3,000,000 population	4,625
3,000,001–6,000,000 population	6,950
>6,000,000 population	10,425
4. AM Class D	
<=25,000 population	670
25,001–75,000 population	1,000
75,001–150,000 population	1,500
150,001–500,000 population	2,275
500,001–1,200,000 population	3,400
1,200,001–3,000,000 population	5,100
3,000,001–6,000,000 population	7,625
>6,000,000 population	11,450
5. AM Construction Permit	610
6. FM Classes A, B1 and C3	
<=25,000 population	1,075
25,001–75,000 population	1,625
75,001–150,000 population	2,425
150,001–500,000 population	3,625
500,001–1,200,000 population	5,450
1,200,001–3,000,000 population	8,175
3,000,001–6,000,000 population	12,250
>6,000,000 population	18,375
7. FM Classes B, C, C0, C1 and C2	
<=25,000 population	1,225
25,001–75,000 population	1,850
75,001–150,000 population	2,750
150,001–500,000 population	4,150
500,001–1,200,000 population	6,200
1,200,001–3,000,000 population	9,300
3,000,001–6,000,000 population	13,950
>6,000,000 population	20,925
8. FM Construction Permits	1,075
TV (47 CFR part 73)	
Digital TV (UHF and VHF Commercial Stations)	
1. Digital TV Construction Permits	4,950
2. Television Fee Factor	.007837 per population count
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	315

■ 5. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

TABLE 1 TO § 1.1154

Radio facilities	Fee amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$25.00.
Carriers	
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)	.00321.
2. Toll Free Number Fee	.12 per Toll Free Number.

■ 6. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees for cable television services.

TABLE 1 TO § 1.1155

	Fee amount
1. Cable Television Relay Service	$1,300.
2. Cable TV System, Including IPTV (per subscriber)	.89.
3. Direct Broadcast Satellite (DBS)	.72 per subscriber.

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees for international services.

(a) *Geostationary orbit (GSO) and non-geostationary orbit (NGSO) space stations.* The following schedule applies for the listed services:

TABLE 1 TO PARAGRAPH (a)

Fee category	Fee amount
Space Stations (Geostationary Orbit)	$98,125
Space Stations (Non-Geostationary Orbit)	223,500
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	560

(b) *International terrestrial and satellite Bearer Circuits.* (1) Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each active circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for purposes of this paragrpah (b) include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active Gbps circuit will be determined for each fiscal year.

TABLE 2 TO PARAGRAPH (b)(2)

International terrestrial and satellite (capacity as of December 31, 2019)	Fee amount
Terrestrial Common Carrier and Non Common Carrier Satellite Common Carrier and Non-Common Carrier	$41 per Gbps circuit.

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating based on their lit capacity as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

TABLE 3 TO PARAGRAPH (c)—FY 2020 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2019)	Fee ratio	FY 2020 regulatory fees
Less than 50 Gbps	.0625 Units	$13,450
50 Gbps or greater, but less than 250 Gbps	.125 Units	26,875
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	53,750
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	107,500
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	215,000
6,500 Gbps or greater	2.0 Units	430,000

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Part III

Department of Education

Office of the Secretary
34 CFR Parts 75 and 76
Office for Civil Rights
34 CFR Part 106
Office of Postsecondary Education
34 CFR Parts 606, 607, 608, and 609

Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program; Final Rule

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Parts 75 and 76

Office for Civil Rights

34 CFR Part 106

Office of Postsecondary Education

34 CFR Parts 606, 607, 608, and 609

[Docket ID ED–2019–OPE–0080]

RIN 1840–AD45

Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program

AGENCY: Office for Civil Rights, Office of Postsecondary Education, Department of Education.

ACTION: Final rule.

SUMMARY: In response to Executive Order 13864 (Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities), the Department of Education revises its current regulations to encourage institutions of higher education to foster environments that promote open, intellectually engaging, and diverse debate, including through compliance with the First Amendment to the U.S. Constitution for public institutions and compliance with stated institutional policies regarding freedom of speech, including academic freedom, for private institutions. These regulations also require a public institution to not deny a religious student organization any of the rights, benefits, or privileges that are otherwise afforded to other student organizations. In response to recent decisions from United States Supreme Court's decisions, the Department revises its current regulations regarding grant programs authorized under titles III and V of the Higher Education Act of 1965, as amended (HEA), and the eligibility of students to obtain certain benefits under those programs. The Department also revises its current regulations to clarify how educational institutions may demonstrate that they are controlled by a religious organization to qualify for the exemption provided under Title IX, 20 U.S.C. 1681(a)(3), to the extent Title IX or its implementing regulations would not be consistent with the religious tenets of such organization.

DATES: This final rule is effective November 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, U.S. Department of Education, 400 Maryland Avenue SW, Room 290–44, Washington, DC 20202. Telephone: 202–453–6318. Email: *Sophia.McArdle@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of this Regulatory Action: Through these final regulations, the Department reinforces First Amendment freedoms such as the freedom of speech and free exercise of religion. On March 21, 2019, President Trump signed Executive Order 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.[1] In response to this Executive Order, as well as the First Amendment, and the Secretary's general authority under 20 U.S.C. 1221e–3, the Department endeavors to ensure that all institutions of higher education, as defined in 20 U.S.C. 1002(a), that receive Federal research or education grants [2] from the Department ''promote free inquiry.'' [3] Denying free inquiry is inherently harmful at any institution of higher education because students are denied the opportunity to learn and faculty members are denied the opportunity to freely engage in research and rigorous academic discourse.

Both Executive Order 13864 and these final regulations are intended to promote the First Amendment's guarantees of free expression and academic freedom, as the courts have construed them; to align with Federal statutes to protect free expression in schools; [4] and to protect free speech on campuses nationwide. Under the Supreme Court's First Amendment jurisprudence protecting the individual's right to his own ideas and beliefs, ''no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'' [5] As a result, officials at public institutions may not abridge their students' or employees' expressions, ideas, or thoughts.[6]

In a significant opinion, *Keyishian* v. *Board of Regents of the University of the State of New York,* the Supreme Court observed, ''Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.'' [7] Consequently, the First Amendment right of free expression means that public officials may not discriminate against students or employees based on their viewpoints.[8] For example, public institutions cannot charge groups excessive security costs ''simply because [these groups and their speakers] might offend a hostile mob.'' [9] In a landmark opinion, *Tinker* v. *Des Moines Independent Community School District,* the Supreme Court acknowledged more than half a century ago that ''[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'' [10] These final regulations help ensure that students and teachers will retain their constitutional rights to freedom of speech at public institutions.

Academic freedom is another aspect of freedom of speech, as ''[f]reedom of speech secures freedom of thought and belief.'' [11] Academic freedom is an indispensable aspect of the ''freedom of thought and belief'' to which individuals across educational institutions, including private ones, may enjoy.[12] It follows that academic freedom is intertwined with, and is a predicate to, freedom of speech itself; and injury to one is tantamount to

[1] 84 FR 11402.

[2] Exec. Order No. 13864, section 3(c) defines ''federal research or education grants'' as ''all funding provided by a covered agency directly to an institution but do not include funding associated with Federal student aid programs that cover tuition, fees, or stipends.''

[3] *Id.* section 3(a).

[4] 20 U.S.C. 1011a; 20 U.S.C. 4071.

[5] *W. Va. State Bd. of Educ.* v. *Barnette,* 319 U.S. 624, 642 (1943).

[6] *Tinker* v. *Des Moines Ind. Comm. Sch. Dist.,* 393 U.S. 503, 505–07 (1969).

[7] 385 U.S. 589, 603 (1967).

[8] *See, e.g., Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 829–30 (1995).

[9] *Forsyth Cnty., Ga.* v. *Nationalist Mov't,* 505 U.S. 123, 134–35 (1992); *see also College Republicans of the Univ. of Wash.* v. *Cauce,* No. C18–189–MJP, 2018 WL 804497 (W.D. Wash. Feb. 9, 2018) (holding University of Washington Security Fee Policy violates the students' First Amendment rights to freedom of speech and expression).

[10] 393 U.S. at 506.

[11] *Nat'l Inst. of Family and Life Advocates* v. *Becerra,* 138 S. Ct. 2361, 2379 (2018) (*NIFLA*) (Kennedy, J., concurring).

[12] *Id.*

injury to both. Academic freedom's noble premise is that the vigilant protection of free speech unshackled from the demands and constraints of censorship will help generate new thoughts, ideas, knowledge, and even questions and doubts about previously undisputed ideas. Although academic freedom's value derives itself from the fact that its ''results . . . are to the general benefit in the long run,'' academic freedom is also inherently important in a free society.[13]

Academic freedom, just like freedom of speech itself, is predicated on the principle that thoughts, arguments, and ideas should be expressed by individuals and assessed by listeners on their own merit, rather than the censor's coercion. Academic freedom insists on the freedom and power of speech so that the speaker has a fair opportunity to convince the listener of an idea and the listener a fair opportunity to be persuaded. The confluence of free speech and academic freedom is nothing new as far as the United States' educational institutions are concerned. As Yale University, a private American institution of higher learning, acknowledged almost half a century ago: Because ''[t]he primary function of a university is to discover and disseminate knowledge by means of research and teaching,'' ''the university must do everything possible to ensure within it the fullest degree of *intellectual freedom*.'' [14] Yale further deduced that ''[t]he history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable.'' [15] When free speech is suppressed, academic freedom is the casualty many times over, ''for whoever deprives another of the right to state unpopular views necessarily also deprives others of the right to listen to those views.'' [16] Neither harm is tolerable, and these regulations endeavor to protect academic freedom, as a part of free speech, at institutions of higher education.

Executive Order 13864 and the final regulations also align with Federal statutes to protect free inquiry. Congress has expressed that ''no student attending an institution of higher education . . . should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under [numerous] education program[s], activit[ies], or division[s] of the institution[s] directly or indirectly receiving financial assistance.'' [17] Congress has also articulated that ''an institution of higher education should facilitate the free and open exchange of ideas,'' and ''students should not be intimidated, harassed, discouraged from speaking out, or discriminated against'' on account of their speech, ideas or expression.[18] And since 1871, Congress has made actionable violations of the First Amendment by those acting in an official government capacity, whether on campuses or elsewhere.[19] Congress, thus, disapproves of the suppression of or discrimination against ideas in the academic setting.

To be certain, the Department will honor the institutional mission of private institutions, including their religious mission. To this end, the final regulations do not require a private institution to ensure freedom of speech, including academic freedom, unless it chooses to do so through its own stated institutional policies. Private institutions, however, cannot promise students, faculty, and others opportunities to engage in free speech, including academic freedom, in stated institutional policies without delivering on this promise. These private institutions must comply with whatever stated institutional policies regarding freedom of speech, including academic freedom, that they choose to adopt. Religiously affiliated institutions, in freely exercising their faith, may define their free speech policies as they choose in a manner consistent with their mission. The final regulations do not mandate that religiously affiliated institutions adopt any particular policies in order to participate in the Department's grants and programs. In other words, the final regulations do not require any private institution to adopt a campus free speech policy that complies with the First Amendment, and the Department cannot force any religiously affiliated school to compromise the free exercise of its religion.

Indeed, these final regulations help protect the right to free exercise of religion for both institutions and students. Generally, the government may not force institutions and students to choose between exercising their religion or participating in a publicly available government benefit program.[20] In accordance with this principle, no religious student organization should be forced to choose between their religion and receiving the benefits, rights, and privileges that other student organizations receive from a public institution. Religious student organizations should be able to enjoy the benefits, rights, and privileges afforded to other student organizations at a public institution. Similarly, institutions that participate in Federal programs under Title III and Title V of the HEA and their students should be able to freely exercise their religion in accordance with the First Amendment and RFRA.[21] Laws and policies which provide public benefits in a way that is ''neutral and generally applicable without regard to religion'' do not ordinarily offend the First Amendment, but policies that ''single out the religious for disfavored treatment'' violate the Free Exercise Clause.[22] The Free Exercise Clause '' 'protect[s] religious observers against unequal treatment' '' [23] and ''guard[s] against the government's imposition of 'special disabilities on the basis of religious views or religious status.' '' [24] Accordingly, public institutions cannot exclude religious student organizations from receiving neutral and generally available government benefits.[25] These final regulations help ensure that religious institutions as well as their students fully retain their right to free

[13] Chairman's Letter to the Fellows of the Yale Corporation, Report of the Committee on Freedom of Expression at Yale, Yale University (Dec. 23, 1974) (Yale Report on Freedom of Expression).

[14] Yale Report on Freedom of Expression, *supra* (emphasis added).

[15] *Id.*

[16] *Id.*

[17] 20 U.S.C. 1011a. In the same section, Congress has defined ''protected speech'' as ''speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments,'' 20 U.S.C. 1011a(c)(3); and has defined ''protected association'' as ''the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments,'' 20 U.S.C. 1011a(c)(2).

[18] 20 U.S.C. 1011a(2)(C)–(D).

[19] 42 U.S.C. 1983.

[20] *Trinity Lutheran,* 137 S. Ct. at 2024.

[21] *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367 (2020); *Espinoza* v. *Montana Department of Revenue,* 140 S. Ct. 2246 (2020); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017). The Department also considered the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, *et seq.,* the United States Attorney General's October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty, Executive Order 13798 (Promoting Free Speech and Religious Liberty), and Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative).

[22] *Trinity Lutheran,* 137 S. Ct. at 2020.

[23] *Id.* at 2019 (quoting *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah,* 508 U.S. 520, 533 (1993)).

[24] *Id.* at 2021 (quoting *Emp't Div., Dep't of Human Res. of Ore.* v. *Smith,* 494 U.S. 872, 877 (1990)).

[25] *Id.* at 2024–25.

exercise of religion with respect to the Department's programs under Title III and V of the HEA.

Finally, Title IX provides that it shall not apply to an educational institution which is controlled by a religious organization if the application of Title IX or its implementing regulations would not be consistent with the religious tenets of such organization but does not directly address how educational institutions demonstrate whether they are controlled by a religious organization.[26] Nor does the statute provide necessary clarity that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features. These final regulations codify existing factors that the Assistant Secretary for Civil Rights uses when evaluating a request for a religious exemption assurance from the Office for Civil Rights and also address concerns that there may be other means of establishing the requisite control. Many of these factors that the Assistant Secretary considers, however, have been included in non-binding guidance dating back more than 30 years. Accordingly, the Department provides clear terms in these final regulations to provide recipients and other stakeholders with clarity regarding what it means to be ''controlled by a religious organization.'' This clarity will create more predictability, consistency in enforcement, and confidence for educational institutions asserting the exemption.

The Department recognizes that religious organizations are organized in widely different ways that reflect their respective theologies. Some educational institutions are controlled by a board of trustees that includes ecclesiastical leaders from a particular religion or religious organization who have ultimate decision-making authority for the educational institutions. Other educational institutions are effectively controlled by religious organizations that have a non-hierarchical structure, such as a congregational structure. The Department does not discriminate against educational institutions that are controlled by religious organizations with different types of structures. Indeed, the Department has long recognized exemptions for educational institutions that are controlled by religious organizations with hierarchical and non-hierarchical structures.

The Department is constitutionally obligated to broadly interpret ''controlled by a religious organization'' to avoid religious discrimination among institutions of varying denominations.[27] The Department also must take into account RFRA in promulgating its regulations and must not substantially burden a person's exercise of religion through its regulations.[28] The Department's non-exclusive list of criteria for an institution to demonstrate that it is controlled by a religious organization reflect some methods that its Office for Civil Rights has used to evaluate and respond to a recipient's assertion of a religious exemption under Title IX. The final regulations, thus, offer educational institutions different methods to demonstrate that they are eligible to assert an exemption to the extent application of Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices.

Summary of the Major Provisions of this Regulatory Action: The Department promulgates these final regulations to:

- Require public institutions of higher education that receive a Direct Grant or subgrant from a State-Administered Formula grant program of the Department to comply with the First Amendment, as a material condition of the grant;
- Require private institutions that receive a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department to comply with their stated institutional policies on freedom of speech, including academic freedom, as a material condition of the grant;
- Require that a public institution receiving a Direct Grant or subgrant from a State-Administered Formula Grant program of the Department not deny to a faith-based student organization any of the rights, benefits, or privileges that are otherwise afforded to non-faith-based student organizations, as a material condition of the grant;
- Add a non-exhaustive list of criteria that offers educational institutions different methods to demonstrate that they are controlled by a religious organization and, thus, eligible to claim an exemption to the application of Title IX and its implementing regulations to the extent Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices; and
- Amend regulations governing the Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program by defining ''school or department of divinity'' to be more consistent with the First Amendment and other Federal laws and by removing language that prohibits use of funds for otherwise allowable activities if they merely relate to ''religious worship'' and ''theological subjects'' and replace it with language that more narrowly defines the limitations in a manner consistent with the First Amendment and other Federal laws.

Costs and Benefits: The Department estimates that these final regulations would result in one-time costs of approximately $297,770 and would benefit the general public and grantees by improving the clarity of the regulations.

Timing, Comments, and Changes

On January 17, 2020, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register**.[29] The NPRM included proposed regulations that were the same as or substantially similar to regulations that other agencies proposed about the rights and obligations of faith-based organizations with respect to grants.[30] The NPRM also included proposed regulations that other agencies did not include and that were specific to the Department of Education such as regulations regarding free inquiry, Title IX of the Education Amendments Act of 1972, and various programs such as the Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening

[26] 20 U.S.C. 1681(a)(3).

[27] *Larson* v. *Valente,* 456 U.S. 228, 244 (1982) (''The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.''); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171, 202 (2012) (Alito, J., concurring; joined by Kagan, J.) (arguing that a broad, functionalist interpretation of religious teachers for purposes of the ministerial exception is necessary to be inclusive of faiths like Islam and Jehovah's Witnesses).

[28] *Little Sisters of the Poor Saints Peter and Paul Home,* 140 S. Ct. 2367, 2384 (2020) (stating that a federal agency would be susceptible to claims that a rule was arbitrary and capricious if it did not consider the requirements of RFRA in formulating administrative solutions, and further, that it is not error for a federal agency to look to RFRA as a guide when framing a religious exemption).

[29] Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program, 85 FR 3190 (proposed Jan. 17, 2020).

[30] *Compare* 85 FR 3190, *with* 85 FR 2889 (Department of Homeland Security), 85 FR 2897 (Department of Agriculture), 85 FR 2916 (U.S. Agency for International Development), 85 FR 2921 (Department of Justice), 85 FR 2929 (Department of Labor), 85 FR 2938 (Department of Veterans Affairs), 85 FR 2974 (Department of Health and Human Services), *and* 85 FR 8215 (Department of Housing and Urban Development).

Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program. This Final Rule consists of the regulations that are unique to the Department of Education. The remainder of the proposed regulations in the NPRM, including proposed changes to 2 CFR 3474.15, 34 CFR 75.51, 34 CFR 75.52, 34 CFR 75.712, 34 CFR 75.713, 34 CFR 75.714, Appendix A to Part 75, Appendix B to Part 75, 34 CFR 76.52, 34 CFR 76.712, 34 CFR 76.713, and 34 CFR 76.714, as well as the addition of a severability clause in 34 CFR 3474.21, 34 CFR 75.63, and 34 CFR 76.53, will be promulgated through a subsequent final rule. Consequently, there is a new Regulation Identification Number (RIN) for this rule (1840–AD45). Where a severability clause is being added to a subpart for which regulations are included in both final rules, the severability clause is included in only one of the two regulatory packages. However, the severability clauses will apply to all applicable rules, when published, and our explanation of the reasoning for the addition of these clauses in the NPRM continues to apply. This final rule contains changes from the NRPM, which are fully explained in the *Analysis of Comments and Changes* section of this document.

Public Comment

In response to our invitation in the NPRM, we received more than 17,000 comments on the proposed regulations. We discuss substantive issues under topical headings, and by the sections of the final regulations to which they pertain.

Analysis of Comments and Changes

An analysis of the public comments and a discussion of changes made following publication of the NPRM follow below.

34 CFR 75.500(b)–(c) and 34 CFR 76.500(b)–(c)—Free Inquiry

General Support

Comments: Several commenters expressed general support for the proposed rule's free inquiry provisions in 34 CFR 75.500 and 34 CFR 76.500. Commenters stated that students should not be shielded from ideas that might offend them because that may leave them ill-prepared to compete in the global marketplace of ideas. These commenters expressed concern that policies that insulate students from different perspectives would undermine their ability to think critically. Some commenters stated that the proposed rule would produce beneficial effects because it would promote intellectually vibrant and ideologically diverse educational communities. Commenters commended the Department for recognizing that the First Amendment applies to public institutions of higher education but not to private institutions of higher education. One commenter emphasized the importance of the Department respecting the role of the courts in assessing the constitutionality of institutional policies and practices that may violate the First Amendment and asserted that the proposed rule appropriately leaves these determinations to the courts. The commenter also expressed support for the Department in leaving private institutions with the choice of whether to extend free speech protections to their students and faculty. This commenter suggested that for the Department to impose First Amendment obligations on private institutions could potentially violate their own First Amendment rights. One commenter expressed concerns regarding the rise of ''free speech zone'' policies that limit the physical areas where students may engage in demonstrations and other expressive activities, burdensome and potentially biased permitting processes, and overbroad discriminatory harassment policies that may have the effect of stifling free speech on college campuses and violating the First Amendment at public institutions. This commenter expressed some optimism that the proposed rule would alter institutions' risk-benefit analysis when setting and defending their policies and actions, which may result in a significant decrease in restrictive speech codes. Another commenter specifically supported the inclusion of language clarifying that private institutions are free to honor their institutional policies and stated missions, specifically religious missions, particularly as they relate to freedom of speech and academic freedom. They stated that recognizing the autonomy of private institutions in this way respects the freedom that allows for an array of rich, diverse educational options.

Discussion: The Department appreciates the general support from commenters for the free inquiry provisions contained in § 75.500(b) and (c), which apply to Direct Grant Programs, and § 76.500(b) and (c), which apply to State-Administered Formula Grant Programs. The Department acknowledges the beneficial effects of requiring public institutions to comply with the First Amendment to the U.S. Constitution as a material condition for receiving grants from the Department and of requiring private institutions to comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as a material condition for receiving grants from the Department. The beneficial effects may include encouraging both public and private institutions to foster environments that promote open, intellectually engaging, and diverse debate. Free inquiry is an essential feature of our Nation's democracy, and it promotes learning, scientific discovery, and economic prosperity. Indeed, the proposed regulations are intended to promote the First Amendment's guarantees of free expression and academic freedom, as the courts have construed them; to align with Federal statutes to protect free expression in schools; and to protect free speech on campuses nationwide. As one commenter observed, reinforcing intellectual diversity and freedom of speech on college campuses may be especially necessary, given the speech-restrictive policies and actions some institutions have taken in recent years.[31] Furthermore, we agree with commenters who noted it is appropriate for the Department to rely on the judiciary as the primary arbiter of alleged violations of First Amendment freedoms concerning public institutions and alleged violations of free speech protections in stated institutional policies of private institutions. The courts have cultivated a well-developed and intricate body of relevant case law

[31] *See In re Awad* v. *Fordham Univ.,* 2019 N.Y. Slip Op. 51418(U) (N.Y. Sup. Ct. Jul. 29, 2019) (holding private university's refusal to recognize a chapter of Students for Justice in Palestine was contrary to the university's mission statement guaranteeing freedom of inquiry); *McAdams* v. *Marquette Univ.,* 914 NW2d 708, 737 (Wis. 2018) (holding private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 American Association of University Professors (AAUP) Statement of Principles on Academic Freedom, the post was ''a contractually-disqualified basis for discipline''); *Young America's Found.* v. *Napolitano,* Case No. 3:17–cv–02255 (N.D. Cal. Nov. 10, 2017) (Amended Complaint); *id.* (Doc. No. 44) (Statement of Interest by the U.S. Department of Justice, stating that the University of California at Berkeley policies violated the First Amendment); *Shaw* v. *Burke,* Case No. 2:17–cv–02386 (C.D. Cal. Mar. 28, 2017) (Complaint); *id.* (Doc. No. 39) (Statement of Interest by the U.S. Department of Justice, stating that Pierce Community College's policies violated the First Amendment); *see also Community College Agrees to Resolve Free Speech Lawsuit,* Associated Press (Jan. 23, 2018, 11:43 a.m.), *https://www.detroitnews.com/story/news/local/michigan/2018/01/23/constitution-arrest-battle-creek-community-college/109735506/;* Tal Kopan, *Student stopped from handing out Constitutions on Constitution Day sues,* Politico: Under the Radar (Oct. 10, 2013, 2:47 p.m.), *https://www.politico.com/blogs/under-the-radar/2013/10/student-stopped-from-handing-out-constitutions-on-constitution-day-sues-174792.*

and may serve as the primary decision-making body with respect to free speech matters under the final rule. As noted by commenters, the final regulations also accurately recognize that the First Amendment applies to public institutions and not private institutions, and that private institutions may choose stated institutional policies regarding freedom of speech that reflect their values. As explained later in this preamble, only public institutions that are legally required to abide by the First Amendment must do so as a material condition of a grant.

Changes: None.

General Litigation Concerns

Comments: Many commenters expressed concern that the proposed rule would encourage excessive and frivolous litigation that may have harmful effects on institutions of higher education and students. One commenter noted that litigation may not be the ideal way to resolve free speech issues and suggested that other forms of dispute resolution in the educational context may be more immediate and effective. Commenters argued that the proposed rule would result in an increasing number and frequency of speech-related litigation against both public and private institutions, and that this would only increase college and university costs for students. Institutions would have to devote more resources to lawyers and litigation personnel instead of on core educational functions of teaching, research, and service, which would ultimately harm students. One commenter asserted that by tying Federal grant money to the outcome of speech-related disputes, the proposed rule will incentivize plaintiffs' attorneys to add frivolous free speech claims to every lawsuit to pressure institutions to settle. This commenter reasoned that the proposed rule would undermine the Department's free speech goals by discouraging responsive and immediate resolution of free speech claims because institutions would have an incentive to appeal adverse court judgments instead of reaching a post-trial and pre-appeal resolution with plaintiffs. This commenter also suggested that by exposing institutions to the risk of being deemed in violation of a material condition of their grant, the proposed rule would add more pressure on institutions to avoid final adverse judgments by either settling before trial or by appealing the judgment. The commenter expressed concern that the proposed rule may perversely encourage private institutions to eliminate or otherwise limit their stated institutional policies regarding free speech to make it easier to achieve compliance and reduce the risk of potentially losing Federal funding, and stated that this would have the effect of undermining the Department's goal of protecting free speech. One commenter argued that plaintiffs' attorneys could effectively threaten public institutions with potential loss of Federal funding if they do not agree to their demands, which may undermine the constitutional State sovereign immunity doctrine that is designed to protect States.

Another commenter suggested that by raising the stakes of free speech litigation for institutions, the final regulations may have the unintended effect of pressuring courts not to find such violations. To avoid this potential problem, the commenter suggested an alternative framework where the Department would codify well-established First Amendment standards as set forth by the Supreme Court into the final regulations instead of tying the analysis to the outcome of litigation. This commenter argued that adopting this approach through a formal notice-and-comment regulation would have the added benefit of depoliticizing the enforcement of these rights without the possibility of adverse effects on litigation.

Discussion: It is not the intent of the Department to subject public and private institutions to excessive and frivolous litigation, unfairly pressure institutions to change their litigation strategies to avoid unfavorable court judgments, discourage institutions from adopting alternative dispute resolution processes, discourage private institutions from adopting stated institutional policies regarding free speech, increase the costs of higher education and exacerbate affordability issues, distract institutions from their core educational functions, or to otherwise harm students. The Department disagrees that the proposed or final regulations encourage frivolous litigation. Institutions are not required to report any lawsuit against a public institution alleging a violation of First Amendment rights or any lawsuit against a private institution alleging a violation of stated institutional policies regarding freedom of speech, including academic freedom. Additionally, frivolous litigation does not result in a final, non-default judgment against the institution, and an institution's grant from the Department may only be in jeopardy under these final regulations if there is a final, non-default judgment against the institution or an employee acting on behalf of the institution. These final regulations clearly state in §§ 75.500(b)(1) and 76.500(b)(1): ''Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.'' Similarly, these final regulations clearly state in §§ 75.500(c)(1) and 76.500(c)(1): ''Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.'' Rather than expose institutions to liability from frivolous litigation, the Department anticipates that State and Federal courts will continue to recognize and dismiss any frivolous claims and adjudicate meritorious claims to appropriately vindicate the free speech rights of students, faculty, administrators, and other stakeholders. Nothing in the final regulations prohibits institutions from adopting alternative dispute resolution processes to resolve claims. We acknowledge that some grantees may, in the event that they face a lawsuit alleging violations of the First Amendment or institutional policies regarding freedom of speech, shift their litigation strategies to avoid a final, non-default judgment by a Federal or State court against them. To the extent that they do so, such actions could result in additional costs to grantees that they would not incur in the absence of the rule. However, institutions may shift litigation strategies for other reasons, such as to conserve resources through settlement rather than seeking to prevail in court, or for public relations and reputational purposes. Such violations of the First Amendment or stated institutional policies ultimately result in harm to students with respect to the functions of teaching, research, and service because they will not be exposed to the marketplace of ideas that is essential to learning and education. With respect to any potential costs for failing to comply with the First Amendment or stated institutional policies, the Department does not terminate an institution's grant as a first resort. The Department has not historically suspended or terminated a Federal award or debarred a grantee as the first measure in addressing a violation and instead first attempts to secure voluntary compliance from the grantee. Indeed, the Department's regulations provide that the Department may suspend or terminate a Federal award or debar a grantee, if there is a continued lack of compliance and if imposing additional, specific conditions is not successful.[32] We do not believe it

[32] *See* 34 CFR 75.901 (referencing 2 CFR 200.338); 2 CFR 200.338 (stating Federal awarding agency may suspend or terminate an award if

is likely that such violations, if they do occur, would result in a substantial number of grants being terminated unless the institution refuses after a final, non-default judgment to voluntarily comply with the First Amendment or its own stated institutional policies regarding freedom of speech, including academic freedom, or any special conditions that the Department may impose to achieve such compliance. Accordingly, we believe any effect on the litigation strategy of grantees is difficult to predict and would be contingent on the unique facts and circumstances of each case. The Department also wishes to emphasize that courts repeatedly have been called upon to vindicate the free speech rights of students, faculty, and other stakeholders on college campuses. The Department believes that State and Federal courts are appropriate adjudicators of free speech violations under the final rule, and we believe they adjudicate such matters fairly and dispassionately. The Department is the arbiter of the proper penalty, if any, with respect to a public institution that violates the First Amendment or a private institution that violates its own stated institutional policies regarding freedom of speech, including academic freedom. We note that one commenter who raised the issue of State sovereign immunity did not appear to explain exactly how that doctrine would be implicated by potentially withholding grant funds from public institutions for violating First Amendment rights, as determined in a final court judgment issued by a State or Federal court. States are subject to the First Amendment through the Fourteenth Amendment,[33] and Congress may abrogate State sovereign immunity for violations of the First Amendment through legislation under section 5 of the Fourteenth Amendment. The Department's final regulations recognize that Congress provided a right of action in 42 U.S.C. 1983 for violations of the First Amendment by those acting in an official government capacity, whether on campuses or elsewhere.[34] These final regulations do not in any way abrogate sovereign immunity and instead recognize that employees acting on behalf of a public institution are prone to be sued under 42 U.S.C. 1983, if they violate the First Amendment.

The Department agrees with the general assertion made by one commenter that the formal notice-and-comment rulemaking process may have the benefit of de-politicizing regulatory enforcement. We, however, respectfully disagree with the propositions that First Amendment case law should be codified in the final regulations and that the Department should have responsibility for adjudicating violations. The reality is that First Amendment law is subject to change over time. We considered the possibility that the Department itself should adjudicate claims alleging that a public institution violated the First Amendment or alleging that a private institution violated its stated institutional policies regarding freedom of speech, and the Department ultimately decided against this alternative as both State and Federal courts have a well-developed body of case law concerning First Amendment freedoms as well as breach of contract cases or other claims that may be brought with respect to stated institutional policies.

Changes: None.

Potential False Claims Act (FCA) Liability

Comments: Some commenters stated that the proposed rule would result in a flood of frivolous FCA claims against private institutions under 31 U.S.C. 3729, *et seq.* Commenters were concerned that inaccurate certifications of compliance submitted to the Secretary by private institutions may give rise to FCA liability. One commenter noted that FCA actions may result in treble damages plus sizable penalties, which could create a significant incentive for private individuals or organizations to file *qui tam* cases. Commenters asserted that frivolous FCA litigation would impose substantial costs and disruption on private institutions and result in less, not more, protection of free inquiry and expression. One commenter argued that the preamble wrongly suggested that the Department will treat final judgments of non-compliance with institutional policies on free inquiry and expression as *per se* FCA violations. This commenter suggested such legal reasoning is flawed because the FCA is a standalone statute with different elements that plaintiffs must satisfy by a preponderance of the evidence; these statutory requirements such as the defendant ''knowingly'' submitting a false or fraudulent claim for payment or making false statements material to a false or fraudulent claim, apply regardless of a separate court judgment finding non-compliance. The commenter also stated that the proposed rule purportedly linking FCA liability to private institutional policies on free inquiry and expression would create an uneven playing field because FCA liability is generally tied to fairly uniform regulations, statutes, and contractual provisions. And the commenter asserted that the proposed rule failed to provide guidance on what type of conduct would be imputed to a private institution. The commenter cited Supreme Court precedent for the proposition that the government merely claiming a condition is material, as the Department purportedly did in the proposed rule, does not by itself satisfy the materiality requirement under the FCA. Because of these concerns, the commenter recommended that the Department remove language from the preamble that would require private institutions to certify to the Secretary their compliance with institutional policies on free speech as a material condition of an award. Requiring such certification may increase potential FCA exposure, result in a flood of baseless *qui tam* cases, and impose a substantial burden on private institutions. The commenter stated that if the Department opts to retain the certification requirement then it should explicitly clarify that the FCA is an independent statute with standalone requirements that must be proven by a preponderance of the evidence for a court to find a violation.

Discussion: The Department wishes to clarify that, and as one commenter correctly observed, the FCA is a separate statute with distinct elements that must be established to prove liability. Indeed, the Department never stated that a private institution's failure to comply with its own stated institutional policies is a *per se* violation of the FCA. Rather, and as the Department clearly noted in the preamble of its NPRM, the Department considers the condition that private institutions comply with their stated institutional policies regarding freedom of speech to be a material condition of the Department's grant. Similarly, the Department considers the condition that public institutions comply with the First Amendment to the U.S. Constitution to be a material condition of the Department's grant. The Department has revised §§ 75.500(b)–(c) and 76.500(b)–(c) to expressly state that such conditions are material conditions

noncompliance cannot be remedied by imposing additional conditions); 34 CFR 76.401.

[33] *De Jonge* v. *Oregon,* 299 U.S. 353, 364 (1937) (''Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. . . . The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.''); *Cantwell* v. *Connecticut,* 310 U.S. 296, 303–04 (1940); *Near* v. *Minnesota,* 283 U.S. 697, 707 (1931).

[34] *See, e.g., Edelman* v. *Jordan,* 415 U.S. 651 (1974); *Ex parte Young,* 209 U.S. 123 (1908).

of the Department's grant. The Department correctly noted in its NPRM and maintains its position that if private institutions fail to comply with their own stated institutional policies regarding freedom of speech, including academic freedom, then such noncompliance may satisfy the materiality requirement for FCA liability.[35] The Department also noted in its NPRM that there are no cases directly on point under the False Claims Act because the Department and other Federal agencies have not previously required compliance with stated institutional policies on freedom of speech, including academic freedom, as a material condition of a grant.[36] The Department clearly states that these conditions are material conditions in this final rule to place institutions on adequate notice of the Department's position. However, there are other elements that must be proven to establish FCA liability. A court, and not the Department, will ultimately be the arbiter of liability under the FCA.

The Department is not requiring a private institution to adopt any particular policy regarding freedom of speech, including academic freedom, and private institutions should comply with their stated institutional policies. Private institutions currently may face liability if they do not adhere to their own stated institutional policies.[37] Potential liability under the FCA is another strong incentive for private institutions to comply with their own stated institutional policies, and the gravity of any potential consequence under the FCA serves as an adequate deterrent to guard against institutions making empty promises to its students and faculty. Private institutions should accurately represent their stated institutional policies regarding freedom of speech and adhere to such policies. Freedom of speech, including academic freedom, is of the utmost importance for education and learning, and a private institution's stated institutional policies reflect the values of that institution. Students may select institutions based on values reflected in stated institutional policies, and students pay tuition and other fees in anticipation that the institution will comply with its stated institutional policies.

We do not wish to eliminate language that would require private institutions to comply with their stated institutional policies as a material condition of a grant and explain the Department's authority to issue such regulations in the ''Executive Orders and Other Requirements'' section of this preamble. Freedom of speech, including academic freedom, is an integral part of learning and education. Expressly requiring private institutions to comply with their stated institutional policies on freedom of speech, including academic freedom, as a material condition of the Department's grant reinforces the importance of compliance and reminds private institutions of the promises they chose to make to their students, faculty, and other stakeholders.

Changes: The Department has revised these final regulations to expressly state in §§ 75.500(b)–(c) and 76.500(b)–(c) that complying with the First Amendment is a material condition of the Department's grant for public institutions and that complying with stated institutional policies regarding freedom of speech, including academic freedom, is a material condition of the Department's grant for private institutions. The Department made a technical correction to § 76.500(b)(2) to state ''State or subgrantee'' instead of ''grantee'' to align with § 76.500(b)(1). The Department also made a technical correction to § 76.500(c)(2) to state ''State or subgrantee'' instead of ''grantee'' to align with § 76.500(c)(1). These technical corrections also align § 76.500(b)–(c) with the remainder of the regulations in Part 76 of Title 34 of the Code of Federal Regulations, as the regulations in that part refer to States or subgrantees.

Unequal Treatment Between Institutions

Comments: A handful of commenters raised concerns that the proposed rule would result in unequal treatment of public and private institutions. One commenter asserted that to hold public institutions to the First Amendment while only holding private institutions to their own stated institutional policies is unfair and may raise constitutional concerns. This commenter suggested that application of the proposed rule could create an illogical scenario where a public institution would lose Federal funding for denying recognition to a student organization that promotes hate speech prohibited by the public institution's policies, but a private institution in the same situation would not.

Commenters also emphasized that tying Federal funding for public institutions to First Amendment compliance and funding for private institutions to compliance with stated institutional policies could result in unfair treatment because different courts and jurisdictions have different jurisprudence. For example, the Department would create an unequal playing field where an institution could lose funding for engaging in the same underlying misconduct as another institution, but the latter did not lose funding because it was in a different jurisdiction. Commenters noted that the First Amendment is a particularly complex area of law, and cases may be decided by sharply divided courts.

One commenter suggested it may be reasonable for public institutions to rely on dissenting First Amendment court opinions. This commenter argued that the Department is incorrectly assuming that First Amendment case law is obvious, that public institutions should anticipate potential developments, and that this unfairness is compounded by the fact that it can take years for appellate courts to resolve conflicting First Amendment jurisprudence.

One commenter asserted that the proposed rule would create an uneven playing field between private institutions. In particular, this commenter reasoned, courts in different jurisdictions could reach different conclusions about whether private institutions violated their stated policies. And courts may also differ on the question of whether institutional policies are legally binding contracts such that violations may or may not give rise to legal remedies. The commenter expressed concern that this potential inconsistency could result in some private institutions losing Federal grant funding but not other private institutions even where the underlying misconduct at issue is fundamentally the same.

Discussion: The Department wishes to emphasize that, as a matter of law, public institutions are subject to the First Amendment, but private institutions are not. Public institutions that are legally required to abide by the First Amendment cannot as a matter of law promulgate policies that are in violation of the First Amendment. We also note that the commenter who suggested that holding public institutions to their First Amendment obligations while holding private

[35] *See, e.g., Universal Health Servs., Inc.* v. *United States ex rel. Escobar,* 136 S. Ct. 1989, 2002–04 (2016).

[36] 85 FR 3213 n.137.

[37] *See Doe* v. *Univ. of the Sciences,* No. 19–2966 (3d Cir. May 29, 2020) (holding student sufficiently stated a breach of contract claim that the private institution failed to provide procedural fairness as promised in its policy); *McAdams,* 914 N.W.2d at 737 (holding private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the post was ''a contractually-disqualified basis for discipline''). The Department also noted in its NPRM that ''public and private institutions also may be held accountable to the Department for any substantial misrepresentation under the Department's borrower defense to repayment regulations. 34 CFR 668.71.'' 85 FR 3213 n.137.

institutions to their stated institutional policies may raise constitutional concerns did not provide an explanation as to how constitutional concerns would be implicated. Nothing in this final rule requires private institutions to adopt a particular stated institutional policy regarding freedom of speech, including academic freedom, or to adopt a stated institutional policy regarding free speech at all. As such, it may be possible depending on the unique facts and circumstances of a given case that public institutions and private institutions are treated differently under the final rule even where the alleged violation at issue is the same. Nothing prohibits the Department from treating public institutions differently than private institutions in this regard. Indeed, the Department's policy position aligns with the different treatment between public and private institutions reflected in the law; the law subjects public institutions but not private institutions to the First Amendment through the Fourteenth Amendment, while private institutions are legally subject to their own stated institutional policies.

The Department agrees with commenters who noted that the First Amendment may be a particularly complex area of law. It is precisely for this reason, among others, that this regulation defers to courts as the adjudicators of free speech claims against public and private institutions. The Department believes our judicial system has the requisite expertise and impartiality to render such important decisions. We also acknowledge the reality raised by several commenters that different jurisdictions may have different interpretations of the First Amendment and different interpretations of private institutions' stated institutional policies. Accordingly, it is possible that courts may reach different conclusions with respect to institutions' free speech compliance even where the underlying alleged misconduct is fundamentally the same. Institutions, however, will be most familiar with the First Amendment jurisprudence as well as other case law in the Federal and State courts where they may be sued. Thus, it is fair to hold institutions accountable to the laws that already apply to them. The Department also wishes to remind commenters that nothing in the final rule would preclude the right of institutions to appeal adverse court judgments. This may be especially warranted and in the institution's best interests where, for example, the matter involves an especially complex area of First Amendment law or where there is a split among courts in the jurisdiction over how to interpret private institutions' stated institutional policies. Under the final rule, the Department cannot find an institution in violation unless and until a State or Federal court of law has rendered a final, non-default judgment against the institution. The final regulations in §§ 75.500(b)(1), (c)(1) and 76.500(b)(1), (c)(1) clearly state: ''A final judgment is a judgment that the . . . institution chooses not to appeal or that is not subject to further appeal.''

Changes: None.

The Department's Approach Is Unnecessarily Punitive

Comments: Some commenters contended that conditioning Federal funding on compliance with the First Amendment and stated institutional policies is too extreme a punishment. Commenters expressed concern that the proposed rule is too broad because it covers not only final non-default court judgments against public institutions or private institutions but also against ''any of its employees acting in their official capacity'' for public institutions or ''employees acting on behalf of the private institution.'' Commenters asserted that this language could have the effect of potentially threatening institutional funding based on the conduct of a single rogue or unthinking employee, even where the institution terminated or otherwise disciplined the employee whose alleged misconduct resulted in an adverse court judgment. One commenter argued that because of this potential unfairness the Department should remove the phrase ''or an employee of the private institution, acting on behalf of the private institution'' from the final rule. Another commenter raised the example of millions of dollars of critical Federal funding being withheld from an institution because of a single employee's error or good-faith misinterpretation of institutional policy. This commenter emphasized the reality that an institution is comprised of many different individuals, including administrators, faculty, and employees, who may have different interpretations of the institution's values and principles, and that the *mens rea* requirement for institutional culpability under the proposed rule is far too low. The commenter reasoned that organizations cannot always prevent rogue employees from violating established policies and procedures.

Another commenter believed it is unfair and illogical to suspend, terminate, or disbar public institutions from Federal research grants where, for example, the grants are wholly unrelated to First Amendment matters. The commenter expressed concern that students, researchers, and society as a whole may suffer if research and campus programs are ended because of First Amendment litigation unrelated to that program. For example, the commenter noted, a final judgment in a close First Amendment case arising from an unrelated area could lead to the termination of a TRIO grant designed to help first-generation students graduate from college.

A few commenters expressed general concern that the proposed rule leaves the Department with too much latitude in determining how to punish institutions for noncompliance, which could include disbarment. One commenter suggested that the Department could reduce the risk of public backlash by ensuring the penalty for a violation is proportional to the offense, such as by setting the penalty on a sliding scale dependent on the number of full-time students enrolled at the institution.

Discussion: The Department acknowledges the general concerns raised by commenters that conditioning grants on compliance with the First Amendment for public institutions and on compliance with stated institutional policies for private institutions may be unfair, excessively punitive, and harmful to society in some circumstances, and the more specific concerns raised by commenters regarding private institutional liability deriving from employee misconduct. With respect to concerns regarding holding institutions accountable for their employees' misconduct, the Department wishes to emphasize that, under the final regulations, State and Federal courts, and not the Department, will have primary responsibility for determining whether an employee acting in the employee's official capacity violated the First Amendment or whether an employee acting on behalf of a private institution violated its stated institutional policies. The reality is that institutions act through the people who work for them, and the final regulations make clear that institutions will only be held accountable for the actions taken by their employees if the employee was acting on behalf of the private institution. We therefore believe it is important and necessary to retain language in the final rule that would reflect that reality. These final regulations implicate employees that are acting on behalf of the private institution, and the private institution

always may argue that such an employee was not acting on their behalf in any litigation. Similarly, these regulations implicate employees that are acting in their official capacity for the public institution, and public institutions always may argue that such an employee was acting in the employee's personal or individual capacity and not in an official capacity in the litigation. Indeed, lawsuits under 42 U.S.C. 1983 must be against an employee and cannot be against a public institution because public institutions, which are state agencies, have immunity under the Eleventh Amendment.[38] Officials at public institutions may be sued in their official capacity for injunctive relief and not monetary relief,[39] and may be sued in their personal or individual capacity for monetary relief.[40] These regulations provide that public institutions will only be held to account for final judgments against the public institution or against an employee acting in the employee's official and not personal or individual capacity. Courts will consider and determine whether an employee was acting in the employee's official capacity or personal or individual capacity in determining whether a cause of action was properly stated under 42 U.S.C. 1983 and what type of relief is available. With respect to private institutions, factors courts may consider in tort or contract litigation could include whether the violations carried out by the institution's employees were intentional or merely a mistake made in good-faith, whether there was a pattern of misconduct or an isolated incident, whether any breach constitutes a material breach, or whether the institution took prompt and effective remedial action to address the misconduct. The courts' analysis in any final, non-default judgment, thus, will aid the Department in determining whether and how to remedy a violation of the First Amendment with respect to public institutions and a violation of stated institutional policies regarding freedom of speech, including academic freedom, with respect to private institutions. The Department also believes that our judicial system has the requisite expertise and impartiality to render sound judgments that consider all the relevant facts and circumstances of a given case.

We also wish to emphasize that an adverse court judgment against a public or private institution does not necessarily mean that the Department will implement a permanent or otherwise severe remedial action against the institution. As the proposed rule made clear, the Department has a broad range of remedial actions it may consider in the event a State or Federal court renders an adverse judgment against a public or private institution, and the remedies will be commensurate with the egregiousness of the violation. For example, the Department may impose special conditions aimed at remedying noncompliance, temporarily withhold cash payments pending correction of the institution's deficiency, suspend or otherwise terminate a Federal award, or potentially disbar the institution, as described in Subpart G of Part 75 and Subpart I of Part 76 of Title 34 of the Code of Federal Regulations.[41] It is certainly not the intent of the Department to impede important and beneficial research activities undertaken by public institutions. However, we disagree with the proposition that the First Amendment is not implicated in research grants. Ensuring that public institutions respect the First Amendment, which includes academic freedom, is essential to ensuring the integrity of academic research and the fulfillment of public institutions' educational mission. The First Amendment, which includes academic freedom, may prohibit a public institution from preventing a professor from conducting research on a particular topic or subject matter. As explained in more detail in the ''Purpose of this Regulatory Action'' section, denying free inquiry is inherently harmful at any institution of higher education because students are denied the opportunity to learn and faculty members are denied the opportunity to freely engage in research and rigorous academic discourse. Securing First Amendment rights for students and faculty is fundamental to education at public institutions.

Moreover, these potential remedial actions are optional in nature. The Department is not legally required to implement any such remedial action; rather, the final rule merely clarifies that we have the legal authority to do so. Depending on the unique facts and circumstances of a given case, it is possible that the Department would conclude that no remedial action following a final, non-default adverse court judgment against the institution is warranted. Furthermore, we respectfully disagree with one commenter's assertion that the proposed rule leaves the Department with excessive discretion in determining an appropriate remedial action. The NPRM lists several concrete factors that Department officials may consider, such as the actual or potential harm or impact that results or may result from the institution's wrongdoing, the frequency of incidents and/or duration of the wrongdoing, whether there is a pattern or prior history of wrongdoing or whether it was more isolated in nature, the relative positions within the institution of the individuals involved in the wrongdoing, or whether the institution's principals and other supervisory officials tolerated the misconduct.[42] The list of factors debarring officials may consider is non-exhaustive and represents general factors relevant for officials to consider in tailoring potential remedial actions to the severity of an institution's misconduct.[43] The reality is that determining an appropriate remedial action for institutional misconduct is a highly fact-specific inquiry. The Department believes these factors provide adequate notice to institutions and other stakeholders about our decision-making process. It is certainly not the Department's intention to excessively punish institutions or to harm broader societal interests by conditioning grants on public institutions' compliance with the First Amendment and private institutions' compliance with their stated institutional policies.

The Department appreciates the suggestion offered by one commenter to consider penalties on a sliding scale relative to the enrollment size of the institution. Nothing precludes the Department from considering such a factor, if this factor is relevant to a determination of the appropriate remedy. The relative enrollment size of the institution, however, may not be relevant in every situation especially as section 3(c) of Executive Order 13864 defines ''Federal research or education grants'' as including ''all funding provided by a covered agency directly to an institution but do not include funding associated with Federal student aid programs that cover tuition, fees, or stipends.'' Accordingly, the Federal research or education grants at issue do

[38] *Will* v. *Mich. Dep't of State Police,* 491 U.S. 58, 65–66 (1989); *Pennhurst State Sch. & Hosp.* v. *Halderman,* 465 U.S. 89, 97–99 (1984); *Ex Parte Young,* 209 U.S. 123, 149 (1908); *Collin* v. *Rector & Bd. of Visitors of Univ. of Va.,* 873 F. Supp. 1008, 1013 (W.D. Va. 1995).

[39] *Will,* 491 U.S. at 70–71 & n.10; *Cobb* v. *The Rector and Visitors of the Univ. of Va.,* 69 F. Supp. 2d 815, 823–24 (W.D. Va. 1999).

[40] *Kentucky* v. *Graham,* 473 U.S. 159, 167–68 (1985); *Ridpath* v. *Bd. of Governors of Marshall Univ.,* 447 F.3d 292, 306 (4th Cir. 2006).

[41] 34 CFR 75.901 (cross-referencing 2 CFR 200.338); 34 CFR 76.901; 2 CFR 180.800.

[42] 85 FR 3213.

[43] *Id.; see also* 2 CFR 180.860.

not affect Federal student aid programs such as programs under Title IV of the HEA.

Changes: None.

Proposed Modifications

Comments: Commenters proposed several modifications to the proposed rule. One commenter contended that requiring institutions to submit complaints, as distinct from court judgments, is unnecessary because complaints may be unsubstantiated allegations that are irrelevant. This commenter suggested that requiring submission of complaints assumes a level of institutional *mens rea* and culpability that may be unfair.

This commenter also advised the Department to consider providing grants for security to institutions instead of conditioning Federal funding on compliance with the First Amendment or with stated institutional policies. The commenter reasoned that providing grants for security to institutions could effectively protect controversial and diverse speakers from being shut down by protesting students. According to this commenter, grants for security may be a more effective way to promote the Department's free speech goals because it is more narrowly focused on preserving the free speech rights of students and staff, as opposed to the proposed rule's disproportionately punitive approach.

Another commenter urged the Department to avoid discouraging private institutions from adopting institutional policies on free speech by holding private institutions that promise free speech protections to the same standards that public institutions are held to under the First Amendment unless their application for Federal grants specifically explains how the private institutions' commitments to free speech deviate from First Amendment obligations. In short, this commenter believed the Department should require private institutions to clearly explain how and why they would like to be held to a lesser standard than public institutions under the First Amendment because that may discourage private institutions from watering down their free speech protections to avoid liability. The commenter argued that the Department should clarify in the final rule that a private institution's acceptance of Federal grant money constitutes a contract with the Department to honor commitments to free speech and academic freedom and specifically state that students and faculty, along with the Federal government, are the intended third-party beneficiaries of the institution's free speech contractual terms. This commenter reasoned such clarification would foreclose the argument in private lawsuits that an institution's general commitments to free speech and academic freedom are actually subject to undisclosed carve-outs that diverge from the principles of the First Amendment or the core tenets of academic freedom. The commenter also asserted that the Department should require private institutions to publish their certifications (and, if applicable, explain how their standards deviate from obligations imposed by the First Amendment) publicly and prominently on their websites where interested parties such as prospective students, current students, and faculty are likely to visit. According to the commenter, this certification disclosure requirement would have the benefit of enabling those interested parties to choose the school that best fits their values.

Discussion: The Department appreciates the many suggested modifications to the final rule offered by commenters. We note that the final rule would not require institutions to submit complaints to the Department. Rather, institutions would have an affirmative obligation to submit only copies of any non-default, final judgment rendered against them in a State or Federal court that a public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment or that a private institution or an employee of the private institution, acting in his or her official capacity, violated its stated institutional policy regarding freedom of speech, including academic freedom.

With respect to the suggestion offered by one commenter to provide grants for security as an alternative to the final rule, we acknowledge that such funds may be effective in safeguarding fair opportunities for controversial speakers to present their ideas and for listeners to consider them. However, the Department believes that grants for security without further action will not go far enough to address the problem of the denial of free speech rights across American college campuses. Such grants for security will not prevent public institutions from violating the First Amendment or prevent private institutions from violating their own stated institutional policies regarding freedom of speech, including academic freedom. Moreover, it is not our intention to discourage private institutions from adopting stated institutional policies regarding free speech, including academic freedom. We respect private institutional autonomy and believe such institutions should retain flexibility to craft policies that best fit the values of their unique educational communities. Imposing an affirmative obligation on private institutions to explain how their stated institutional policies deviate from First Amendment obligations would be intrusive because private institutions are not legally required to abide by the First Amendment. The Department also believes our judicial system is well-equipped to determine whether and in what way institutions' violations of their free speech obligations and commitments are legally actionable under the final regulations. As such, it would be improper for us to operate under the assumption that all commitments made by a private institution in connection with the Department's grants are only contractual in nature, and other laws such as State laws ultimately will determine whether any stated institutional policies constitute a contract. Even if the Department considered these stated institutional policies to constitute a contract, the governing State law or other laws may require a different result. We also note that a private institution's failure to adhere to its own institutional policies can be a contractual breach but it can also be a tort or more. Additionally, we do not wish to specify that only faculty and students are the intended third-party beneficiaries of a private institution's stated institutional policies regarding freedom of speech, including academic freedom. There may be other groups of people who also are third-party beneficiaries of a private institution's stated institutional policies regarding freedom of speech, including academic freedom, and the Department will defer to the State and Federal courts as well as the relevant case law to determine which groups of people are third-party beneficiaries of such stated institutional policies. We believe courts provide neutral, reasoned judgments, as they have long recognized contractual relationships between students and their institutions, and between employees and other stakeholders and their institutions.

The Department carefully considered the potential value to students, employees, and the general public by imposing a disclosure requirement on private institutions to make publicly available their stated institutional policies regarding free speech, including academic freedom. We acknowledge that such a requirement may enable stakeholders to make informed choices and compare institutions. In addition,

we note that the commenter did not suggest a similar disclosure requirement for public institutions, nor provide an explanation as to why such a requirement should not apply. However, we did not propose imposing such a burden on either public institutions or private institutions and do not wish to do so now. Requiring either public or private institutions to post all of their policies regarding the First Amendment or freedom of speech, including academic freedom, respectively, is an enormous undertaking as institutions may have various policies for faculty and students such as policies on curriculum, employee codes of conduct, chalking, posting on bulletin boards, protesting, etc., and each school or department may have their own policies on freedom of expression. To gather all such policies and publicly post them on websites is a burden that the Department does not currently wish to impose at this juncture, although such a burden may be appropriate if private institutions seek to hide or obscure their stated institutional policies in the future. The Department wishes to emphasize that nothing in the final rule would prevent private or public institutions from publicly and prominently disclosing their free speech policies, should they choose to do so. Some institutions may even be required to do so under State laws.[44]

Changes: None.

''*Academic Freedom*'' *Concerns*

Comments: One commenter contended that the Department should remove all reference to ''academic freedom'' from the final rule. The commenter noted that neither the President's Executive Order nor the Higher Education Act statutory provisions cited in the proposed rule explicitly referenced ''academic freedom'' or the concept of academic freedom, and argued that the Department appears to mistakenly assume that academic freedom and freedom of speech are coextensive. Academic freedom is a complex concept, and the commenter stated that the Department also failed to distinguish institutional academic freedom from individual academic freedom. For example, the commenter stated, institutions have their own academic freedom to hold their faculty accountable to certain professional standards and to require them to perform their duties with integrity. The commenter reasoned that purported violations of ''academic freedom'' are an inappropriate basis to withdraw grants. Instead, the commenter requested that the Department substitute the actual text of the Executive Order into the final rule's language or to otherwise make these changes through sub-regulatory guidance.

Discussion: The Department respectfully disagrees with the assertion made by the commenter that all reference to ''academic freedom'' should be removed from the final regulations. Executive Order 13864 references ''stated institutional policies regarding freedom of speech for private institutions,'' [45] and academic freedom is derived from and squarely rooted in freedom of speech.[46] The Supreme Court of the United States has eloquently explained why respect for freedom of speech, which includes academic freedom, is so critical in higher education:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.[47]

As the Department explains in the ''Background—Part 2 (Free Inquiry) section'' of the NPRM,[48] the courts have consistently viewed academic freedom as an important and distinct interest with respect to freedom of speech.

Faculty, staff, and other institutional stakeholders have academic freedom interests. This concept of academic freedom is widely recognized as a core value; for example, at least one commenter cited to the well-known and highly regarded American Association of University Professors (AAUP), *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments* (AAUP's *Statement of Principles on Academic Freedom*).[49] Indeed, courts have held private institutions accountable to the AAUP's *Statement of Principles on Academic Freedom* to the extent such a private school has adopted this statement.[50] Academic freedom is an indispensable aspect of the freedom of thought and belief to which individuals across educational institutions, including private ones, are entitled. It is intertwined with, and is a predicate to, freedom of speech itself. For example, academic freedom may include faculty rights to choose curriculum, coursework, and other subject matter materials, and to explore avenues of thought in and out of the classroom. Academic freedom may also encompass students' right to pursue truth and knowledge relevant to their fields of study. The rigorous pursuit of truth and knowledge is central to the purpose of an educational institution, and the Department strongly believes that institutional violations of academic freedom rights are a legitimate basis for remedial action. As the President's Executive Order 13864 made clear, the Department is to ''take appropriate steps'' to ''ensure institutions that receive Federal research or education grants promote free inquiry.'' [51] Simply substituting the Executive Order's text into our final rule would not by itself accomplish the objectives set out by the President. Indeed, the Executive Order's very language contemplates that the Department would exercise at least some discretion in determining the most appropriate means of accomplishing its goals. After careful consideration, the Department believes the approach contained in the final rule, which would entail potential remedial action by the Department only in the event of a non-default and final adverse court judgment against an institution, would most effectively implement this Executive Order. Such an approach respects a private institution's academic freedom because the Department does not require a private institution to adopt any particular stated institutional policy regarding freedom of speech, including academic freedom, and will respect whatever stated institutional policies, if any, that a private institution chooses to adopt.

Lastly, we believe that free inquiry on our Nation's campuses is a fundamentally important subject that deserves a serious rulemaking process. As such, a formal notice-and-comment rulemaking, as opposed to non-binding sub-regulatory guidance, is the most appropriate approach. It also reinforces the Administration's commitment to the rule of law and robust public participation in the development of regulations that govern us.

Changes: None.

[44] *See, e.g.,* Va. Code section 23.1–401.1(B).

[45] 84 FR 11401.

[46] *See* 85 FR 3196–99.

[47] *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250 (1957).

[48] 85 FR 3196–99.

[49] *Available at https://www.aaup.org/file/1940%20Statement.pdf.*

[50] *McAdams,* 914 N.W.2d at 737 (holding private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the post was ''a contractually-disqualified basis for discipline'').

[51] 84 FR 11402.

Departmental Discretion Over Remedial Actions

Comments: One commenter argued that the trigger for noncompliance under the proposed rule is far too low and urged the Department to establish a higher threshold. The commenter believed that a single adverse court judgment should not by itself justify a loss of Federal funding; the impact of such a penalty is disproportionate. Instead, the Department should deem an institution out of compliance only if there is a pattern of final, non-default judgments finding serious violations of the First Amendment or stated institutional policies. Alternatively, the Department could modify the trigger to only apply where the institution failed to immediately comply with an adverse final court ruling. This commenter also recommended that the Department more clearly define the circumstances under which it may terminate or suspend grant funding. The commenter expressed concern that institutions may not have adequate guidance or sufficiently clear precedent to understand when free speech violations can result in lost funding. The commenter acknowledged that the preamble listed factors that the Department may consider, including: The ''actual or potential harm or impact that results or may result from the wrongdoing,'' the ''frequency of incidents and/or duration of the wrongdoing,'' ''whether there is a pattern or prior history of wrongdoing,'' ''whether the wrongdoing was pervasive within [the institution of higher education],'' and whether the institution's ''principals tolerated the offense.'' However, the commenter contended that the Department still has too much discretion in determining appropriate sanctions. According to the commenter, this may result in politicized judgments and unfair treatment of institutions who engage in the same underlying misconduct. The commenter asserted that the Department should more precisely define the amount of discretion it has in determining sanctions. The commenter suggested, for example, that the Department be allowed to suspend or terminate grant funding only where certain aggravating factors are present, such as a systematic pattern or practice of violations or deliberate indifference by an institution. This commenter also believed that the Department should first be required to work with a given institution to achieve compliance before imposing any sanctions. Another commenter expressed concern that the proposed rule would deem institutions in violation of a material condition of their Department grant even if the institution cured or otherwise remedied the violation before the court entered an adverse ruling. This commenter urged the Department to consider whether the institution had taken steps to voluntarily cure the underlying violation as a relevant factor in determining appropriate remedies for an institution's non-compliance.

Discussion: The Department wishes to emphasize that the final rule will not compel the Secretary to take any particular remedial action with respect to a grant in the event of a final, non-default judgment by a State or Federal court that a public institution violated the First Amendment or a private institution violated its stated institutional policies regarding freedom of speech, including academic freedom. As a matter of course, the Department attempts to secure compliance by voluntary means or by imposing special conditions before turning to more serious remedies, and the Department's final regulations state as much.[52] The final rule includes a broad range of pre-existing potential remedial actions described in subpart G of Part 75 and Subpart I of Part 76 of Title 34 of the Code of Federal Regulations, including imposing special conditions, temporarily withholding cash payments pending correction of the deficiency, suspension or termination of a Federal award, and disbarment. Indeed, the Secretary would retain discretion to, for example, take remedial action where the institution has demonstrated a pattern of non-compliance or deliberate indifference, or opt not to take remedial action where the institution promptly implemented appropriate corrective measures to remedy the violation. The Department also must abide by the Administrative Procedure Act and cannot act in an arbitrary or capricious manner with respect to any institution without facing liability.[53] The Department acknowledges the concerns raised by one commenter that the factors elucidated in the preamble of the NPRM that debarring officials may consider might not provide adequate guidance to institutions in some circumstances and could lead to inconsistent treatment of institutions for engaging in the same misconduct. The Department will use the same regulatory rubric that it uses to take other remedial actions for violations of a grant condition for the conditions in §§ 75.500(b)–(c) and 76.500(b)–(c), and a violation of the First Amendment for a public institution or a violation of stated institutional policies for a private institution does not merit a completely different regulatory scheme for remedial action. All the same concerns that the commenter raises may be raised about existing grant conditions and the Department's discretion to address them, and experience has not borne out these concerns. The Department uses the existing regulatory scheme to determine the most appropriate remedial action for egregious violations such as fraud or criminal actions such as theft, and the Department examines the unique factual circumstances of each violation before determining what, if any, remedial action is appropriate. Similarly, we believe that, as with all violations of the conditions of a particular grant, decisions regarding appropriate remedies must be made on a case-by-case basis. As a practical matter it is therefore impossible to provide comprehensive and exact guidance to institutions and stakeholders as to precisely how the Department will act in all future cases. The Department needs to retain some flexibility to determine appropriate remedial actions, if any, given the unique facts and circumstances of each case. We also wish to remind commenters that the fundamental question of whether an institution violated free speech rights in the first instance will be decided by the courts, and not the Department. This approach has the additional benefit of de-politicizing the process.

Changes: None.

Timeframe for Submission of Adverse Court Judgments

Comments: One commenter requested that the Department extend the applicable timeframe for institutions to submit notice of a final adverse court judgment to the Department. The commenter noted that in Federal courts, parties generally have 30 days to submit an appeal on a judgment but that there are circumstances when this window should be extended. Some State courts permit longer time periods for submitting appeals. The commenter concluded that the Department should amend the final rule to require institutions to submit notice of any final, non-default court judgment no later than 30 days following the expiration of the period for filing a notice of appeal.

[52] *See* 34 CFR 75.901 (cross-referencing 2 CFR 200.338 (Remedies for noncompliance)); 2 CFR 200.338 (''If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in circumstances. . . .'').

[53] 5 U.S.C. 706(2)(A).

Discussion: The Department is sympathetic to the idea that institutions should have more time to submit copies of final court judgments. However, applicable appeals periods may vary across jurisdictions, and therefore tying the window for submitting adverse court judgments to such periods may result in conflicting timelines and make it more challenging for the Department to ensure compliance. As a result, the Department is extending the applicable timeframe from the 30 days proposed in the NPRM, to 45 calendar days. As the commenter noted, most Federal courts provide at least 30 days for a party to file an appeal, and allowing an institution 45 days to provide the Department with a copy of the final, non-default judgment will help ensure that the institution has adequate time to decide whether to appeal the judgment. The Department believes that applying a uniform timeline of 45 calendar days for all institutions would serve the interests of clarity, consistency, and ease of administration. Institutions will have 45 calendar days, as opposed to 45 business days, because business days are not uniform across the country. For example, there may be regional holidays that apply for some institutions but not others. As such, the Department believes that using calendar days instead of business days is clearer, more consistent, and will make it easier to ensure compliance.

Changes: We have extended the applicable timeframe for institutions to submit copies of final adverse court judgments to the Department from 30 days to 45 calendar days.

Questions on ''Stated Institutional Policies''

Comments: One commenter submitted several requests for clarification regarding the phrase ''stated institutional policies regarding freedom of speech, including academic freedom'' contained in the proposed rule. In particular, the commenter noted that the Department did not clearly define what types of documents constitute ''stated institutional policies.'' For example, it is unclear to what extent a particular document must address ''academic freedom'' or ''free speech'' such that compliance with it constitutes a material condition for Federal research and education grants. The commenter also expressed uncertainty as to what makes a given document ''institutional.'' For example, it is unclear whether any department or school within an institution can have its own ''institutional'' policy or whether the policy must be institution-wide. The commenter also questioned whether the proposed rule would require private institutions that do not have stated institutional policies to adopt them and, if so, whether the protections offered by their stated institutional policies must be coextensive with First Amendment rights. Lastly, the commenter requested clarity as to whether a private institution's compliance with its stated institutional policies regarding freedom of speech and academic freedom is a material condition even where the institution states that its policies are legally unenforceable. The commenter sought to know whether the proposed rule would require such policies to be enforceable through contract or tort, or at least prohibit private institutions from explicitly framing them as legally unenforceable.

Discussion: The Department appreciates the substantive requests for clarification regarding the scope of the phrase ''stated institutional policies regarding freedom of speech, including academic freedom'' in the proposed rule. We note that whether a given institutional policy is covered by the final rule will be clarified by State and Federal courts first because these courts will determine whether the stated institutional policies concern freedom of speech, which includes academic freedom. The Department will determine that a private institution has not complied with its stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom.

We note that nothing in the final rule necessarily limits covered policies to those that are institution-wide, or requires covered policies to be presented in a particular format. For example, covered policies may include, but do not necessarily have to be presented as, circulars, bulletins, or catalogues. Stated institutional policies also may be in the form of representations made by an institution's employees who are acting on behalf of the institution. For example, an employee acting on behalf of an institution may state that reservations are required to reserve an outdoor space for a demonstration or a protest, and these representations may constitute a stated institutional policy. And it may be possible for a covered policy to be department-specific, or to apply only to students or to employees. Further, and as stated in the preamble of the NPRM, these regulations would not compel private institutions to adopt a particular stated institutional policy, or to adopt any policy at all. If a private institution chooses to adopt a stated institutional policy regarding free speech, which includes academic freedom, then nothing in the final rule would compel that institution to make its protections coextensive with the First Amendment. And the question of what effect, if any, a statement that a given institutional policy is not legally enforceable has is a matter to be decided by State and Federal courts through litigation.

Changes: None.

34 CFR 75.500(d) and 34 CFR 76.500(d)—Religious Student Organizations

Comments in Support

A significant number of commenters advocated that universities should be diverse and inclusive spaces for all students, including religious students. These commenters also stated that religious student organizations make their best contribution to campus life when they retain their distinct religious identity and character and that the proposed regulations would protect religious student organizations' identity and character. Most of these same commenters thanked the Department for the proposed regulations to promote the equal treatment of religious student groups[54] so they can continue to serve their campuses. The Department appreciates the comments in support of these final regulations and includes the comments in support of these final regulations based on the various topics the commenters addressed in describing the benefits of religious student organizations as well as the struggles that religious student organizations face.

Comments:

Pluralism and Diversity

Many former participants in religious student groups expressed how religious student groups enhanced their experience at universities because they were given the opportunity to explore personal beliefs and experience and contribute to diversity on campus.

One commenter shared their experience serving in their forty-first year as a campus minister at several different universities and is a member of an association of campus ministers at the university where they serve and in this capacity met and collaborated with university presidents, deans, and a variety of student service departments throughout their time in ministry. This same commenter explained how

[54] The Department refers to ''religious student organizations'' interchangeably as ''religious student groups.''

campus ministers mediate between university governance and student groups to contribute to campus diversity and added that religious groups strive to broaden diversity and enhance inclusivity on college campuses.

One commenter recalled their experience serving in student government at their university, how allowing religious student groups to participate in campus life contributed to mutual understanding and appreciation among a diverse student body. The commenter stated that such diversity makes universities thrive.

Another commenter recalled their experience as a leader of a religious student group where students benefitted from the diversity and inclusivity fostered by religious groups on campus. Students were able to explore faiths and practice their beliefs which many commenters affirmed.

One commenter noted how religious groups are often excluded from conceptions of diversity on college campuses, yet religious organizations contribute to campus diversity. The commenter observed that organizations can only achieve this diversity by organizing with the integrity and conviction afforded by the proposed regulations.

Several students from religious legal societies noted how they were able to fellowship with those in their faith traditions in addition to explore different belief systems in the diverse, intense environment of law school. One of these commenters noted how having a greater variety of religious student groups would have only further increased diversity to benefit the campus.

One commenter observed that religious student groups provide support and opportunities for students. This commenter was able to connect with students of other faiths in this environment and suggested that religious organizations allow students to connect with the ''outside world'' beyond the university. Another commenter noted how religious student groups contribute to students' needs from a variety of backgrounds—including non-religious students—offering students access to food, finding housing for homeless students, and supported lonely or suicidal students.

One former participant of a religious student group noted how their group especially encouraged multiethnic diversity on campus and how this initiative led to religious student group leaders assisting with training of university dorm leaders on this topic.

Commenters also observed how religious student organizations were inclusive of the broader campus communities. A commenter recalled that all students were invited to participate in the religious organization's discussions and service projects. The commenter clarified that while this religious group worked alongside groups with different beliefs, the commenters' organization was necessarily led by leaders with a distinctive religious perspective. Another commenter shared that the religious organization's religious integrity was essential to its inclusivity as the organization coordinated with other student groups to serve the campus community.

Personal Edification From Religious Student Organizations

Student Health and Well Being

A commenter stated that a religious student group contributed to their health and life trajectory in addition to maturing their own beliefs in college. Another commenter expressed that participation in a religious student group offered social and emotional maturity throughout the commenter's experience. Many commenters described participation in religious student groups as life-changing, transformative, or with great impact on their day-to-day life. Other commenters shared how participation in religious student groups allows for academic, social, and psychological growth. One commenter shared how numerous studies conclude that religion and spirituality predict mental health, self-esteem, and constructive social activities, and at the same time, non-involvement is negatively associated with destructive behaviors such as drug and alcohol abuse, risk-taking, and crime. One commenter shared a story of how they were struggling with substance addiction as a freshman entering university, but participation in a religious student group helped them get clean and become healthy and involved in the university. Another commenter shared how participation in religious student groups has enabled good stress management while in school, enhanced this commenter's holistic thinking and leadership skills, formed life-long friendships, and facilitated positive opportunities to serve the campus and community.

Several commenters shared how religious student groups allow students to thrive in a rigorous environment. A commenter expressed how religious student groups brought healing and helped students through challenges posed by post-graduate studies. Another commenter added that religious student groups are important for students in a time of anxiety.

One commenter shared how they attended a college where religious conversations were encouraged, and they participated in a small group where they talked about real life and real religion. They shared how they were so grateful to have had the opportunity to mature in that environment. They stated that they were not allowed to rest on what they thought might be true, but rather had to discover what was true. They also stated that today's youth are the most anxious generation ever due to a lack of agreed-upon truths that provide a framework for living well, and that the freedom to explore faith in college let them hear about religious thought and the opportunity to find peace there.

Community

A number of supportive commenters were former or current participants in religious student groups expressing how those groups are valuable because they are spaces where community and healthy, wholesome relationships can be formed, and mentorship opportunities are available.

Another commenter shared how participation in a religious student group developed a broader array of relationships across gender, ethnic, cultural, and sexuality lines than any other season of their life and it was specifically because of their involvement with a religious student group. One commenter described religious student groups as unique places in the world where people from any walk of life, social setting, socio-economic background, faith background, sexual orientation, etc., can come together to learn with and from one another.

One commenter described their religious organization as welcoming and creating an open atmosphere in which conversation could be held. Another commenter found that participation in a religious student group made them a more compassionate citizen and informed discussions about justice and faith on campus.

A commenter shared that when they were a college student, the religious groups on their campus contributed the most to campus life, community service, and social justice. The commenter stated that the Black Campus Ministries group, because of their convictions, influenced the university's President to make changes that made the university more accessible for students of color. One commenter shared how being a minority on campus was an intimidating experience, but a religious

student group offered a safe space for building relationships and community.

Several commenters expressed how a religious student group was integral to incorporating this commenter into the campus community and acclimating to a large student body. One commenter expressed how access to a religious student organization provided access to resources that would have been difficult to obtain without a vehicle, in addition to creating a community.

Many commenters described how religious student groups unify and heal campuses. Several commenters noted how religious student groups worked to unify and support campuses after tragic on-campus events. Another commenter expressed that religious student groups provided a place for racial harmony. Another commenter stated that religious student groups preserve diversity when campuses are politically polarized, since the groups welcome students across political lines. A commenter explained how a religious student group initiated a campus-wide debate series which was beneficial to the community beyond just religious students.

One commenter expressed how a religious student group allowed the commenter to form a likeminded community and face challenges posed by law school. One commenter noted how religious student groups provided sanctuary and a safe haven for individuals in law school. A commenter recalled experiences from a religious student group at law school which offered mentorship to first-year law students. Religion was able to inform these students' legal studies, and students were able to explore their beliefs through religious student groups. Additionally, one commenter expressed that participation in a religious sports organization provided support through uniquely challenging experiences presented to student athletes.

Another commenter added that learning how to respect religious beliefs made them a better global citizen. Several commenters recalled programs through their religious student groups which would reach out to and incorporate international students into the student body, and some offered mentorship opportunities.

Several commenters noted that religious student groups create a place for religious students to gather when faculty did not appear welcoming or were hostile towards religious beliefs. Another commenter noted that religious student groups were silenced, hampered, and discriminated against on campus which hurt religious student groups and the greater campus community as a whole.

According to another commenter, the community formed by religious student groups is paramount during transitional periods in students' lives and that some religions are centered around relationships with members of the same faith tradition. A commenter noticed how religious student groups particularly helped at-risk students. A commenter observed how religious student groups provide support to students who are adjusting to and navigating life beyond the guidance of their families. Religious student groups provide spiritual and life guidance with warmth and compassion for students who are settling into their new campus environments, according to several commenters. A commenter noted how religious student groups provide mentorship and emotional support and companionship for students struggling with their home lives or personal challenges.

According to commenters, religious student groups afforded students alternative social opportunities to develop healthy relationships on campus. One commenter shared that participation in a religious student group helped them long for a vision in which the Greek system was healthier and restored to its original intent. They stated that the Greek system has a bad public image and persona, but the commenter believes at its roots was a desire to better men and women around a common set of core ideas and values. Their time with Greek InterVarsity helped them want to advance Greek life on campus that more holistically reflected these original ideas and values than living into the perceived public image of just partying. The commenter believes that those in the Greek system are grown and challenged in this stage of life in such a way that it helps prepare and equip them to serve their communities at large after graduation.

Service

A significant number of commenters discussed the community service that religious student groups perform, including many stories from current and former students about service projects through their religious student organizations. Many commenters shared how they were able to partner with other campus organizations or lead campus initiatives. One Christian campus organization was even given an award for forming successful partnerships with local, national, or international organizations in an effort to make a positive impact on society, according to a commenter from a public university. Religious student groups were where one commenter learned the power of ''us'' as opposed to ''me'' as an individual, and how much positive impact a group with the same mission can have. One commenter expressed how religious student groups build students up to empower them to do good in their communities.

One commenter stated that participation in a religious student group set a foundation for charity and civic duties as a citizen. Another commenter believed that participation in a religious student group helped them to become a more intentional, compassionate person to care for others around them. Several commenters expressed that religious student groups taught them how to care and advocate for the marginalized in society. One commenter shared about how involvement with religious student groups exposed the student to topics related to their major of study such as systemic injustices, caring for the homeless and the marginalized, and how to care for the environment.

Another commenter shared how religious groups would provide services to their campuses like cleaning up after fraternity campuses and working in soup kitchens. One commenter shared how participation enhanced their hospitality skills and ability to contribute to the campus environment.

One former participant in a religious student group shared how a Christian group hosted a collective drive where they could engage the entire campus community to serve called ''Love Puerto Rico'', in which they collected supplies like generators, tarps, and extension cords that were sent to Puerto Rico to assist in Hurricane Maria relief efforts. Another commenter shared that their religious student group organized activities like serving the homeless, tutoring children, raising money for cancer research, and more similar service projects because of their religious beliefs. One commenter shared how their religious student group set up welcome events during the first weeks of school so students can get to know other students and build relationships on a campus where 95 percent of students commute from around the city. A commenter shared how a religious student group taught them to care about the global issues of the world and played a key role in educating them about fighting human trafficking and partnering broadly within the university to work together to create programs to help others fight human trafficking.

Soft Skills

Multiple commenters shared how participation in religious student organizations can provide opportunities

to lead and enhance leadership and other practical skills. A commenter shared that they would not have developed as a leader if they had not joined a religious student group, since other leadership activities such as sororities were selective organizations with limited opportunities. One commenter recounted their experience with leadership in religious student groups which uniquely provided an opportunity to lead in their local community. Another commenter experienced lifelong benefits from the leadership training provided by religious student groups. Multiple commenters noted how involvement with religious student groups improved communication and organizational, in addition, to leadership skills. Another commenter noted how participation in a religious organization was an asset to the campus, as it increased their critical thinking skills, knowledge base, exposure to cultures, and provided a community. A commenter found that participation in a religious student group informed some students' career paths.

Commenters noted the improvement to their educational environment from participation in religious student groups. One commenter noted how religious groups' participation provides a holistic education for students. One commenter recalled how participation in a legal student group throughout law school taught the commenter how to practice the law in the context of their faith, and another law student shared how participation in a religious student group created a forum in which law students could address related topics like the separation of church and state. Another commenter shared they learned to read religious texts and interpret them for themselves.

One commenter added to the discussion on social benefits of religious student groups by noting how they learned to listen and value the perspectives of a diverse group of people—a skill the commenter stated was not taught inside the classroom. Multiple commenters observed how religious student groups provided forums for students to debate ideas. Another commenter described religious student groups as a safe environment to ask hard and meaningful questions. Another commenter elaborated that religious student groups were a space to explore questions of meaning and purpose and learn how to pursue things like social justice, racial reconciliation, and environmental stewardship on the commenter's campus and in the commenter's community. One commenter shared that, during the 1970s, a religious student group guided them to think about social issues like race and class.

One commenter recalled how, although there were sometimes conflicts among groups, allowing student groups to have membership requirements allowed diversity that was a helpful preparatory experience for life. Another commenter added that their experience in a religious student group taught them how to respect others' beliefs and to engage congenially with those who have different religions. One commenter shared how exploring their faith in a Christian student group allowed them to grow to be more accepting of religious differences, more aware of the failings and strengths of their own faith tradition, and more desirous of genuine dialogue between differently-believing students on campus.

One university professor who teaches political science and philosophy described their courses on ''church and state'' issues, where the class would debate this very issue as it has been a current event for the past few years. The professor was regularly unable to get their students to debate from the side of public universities that wish to discriminate against faith-based groups by requiring them to adopt ''university standards'' for student leadership of their clubs. The students, whether for faith-based reasons or not, were virtually 100 percent in agreement that clubs should be free to choose their own leaders and write their own constitutions without conforming to the university's requirements.

Administrative Burden on Religious Student Organizations

Several religious student group representatives and commenters expressed relief that State legislatures had passed legislation to protect the integrity of religious student groups and therefore supported these regulations to apply federally. One commenter noted that the Department's adoption of the provision for religious student organizations would bring Federal policy in line with at least 15 States that have enacted laws to this effect.[55]

[55] Commenter cited: 2019 Ala. Laws 396 (2019); Ariz. Rev. Stat. Ann. section 15–1863 (2019); Ark. Code Ann. section 60–60–1006 (2019); Idaho Code section 33–107D (2019); S.F. 274, 88th Gen. Ass. 1st Sess. (Iowa 2019); Kan. Stat. Ann. section 60–5311–5313 (2019); Ky. Rev. Stat. Ann. section 164.348(2)(h) (LexisNexis 2019); La. Stat. Ann. section 17:3399.33 (2018); N.C. Gen. Stat. section 115D–20.2, 116–40.12; Ohio Rev. Code Ann. section 3345.023 (LexisNexis 2019); Okla. Stat. tit. 70, section 70–2119.1 (2014); H.B. 1087, 94th Leg. Assemb., Reg. Sess. (S.D. 2019); Tenn. Code Ann. section 49–7–156 (2017); S.B. 18, 86th Leg. (Tex. 2019); Va. Code Ann. section 23.1–400 (2013).

Derecognition

One university student shared their story of administrative interference in which a State university system refused to allow religious groups to have any faith-based qualifications for their leaders, prompting concern among religious groups that their leaders would not be required to agree with their mission or teach their faith. The commenter explained how the university's rules forced their religious organization to choose between getting registered and risking their specific beliefs being watered down or having strong leaders who could authentically teach the faith while losing their status as a registered group for nearly one year. The group chose not to compromise their beliefs and accept a non-registered status which lost them benefits granted by the university. The group was unable to host all of its usual events since they had to pay for a space on campus in which to hold their meetings at an unsustainable cost.

One commenter shared that well-intended anti-discrimination policies at both public and private universities can be used in an ''indiscriminate'' manner that nearly undermined the ability of the campus ministry in which the commenter participated. Their group was threatened with de-recognition if they had any faith criteria for their leaders.

A university professor who serves on the national board of a student-focused ministry organization, shared how at their university within the last three years, student groups have been told that they cannot be recognized as a student group because ''there are too many Christian groups'' on campus or because their leadership is unable to confirm that they will comply with university non-discrimination requirements which directly contravene the religious tenets that the religious groups embrace. Although these decisions were appealed and mostly reversed, the student groups experienced weeks of delay arising from prejudice or misconceptions. The commenter shared that even when the decision was eventually reversed, it unnecessarily exacerbated polarization which discourages discussion and debate of important ideas on campuses.

A college denied the application of a religious student organization because the university alleged that there were ''enough of those'' religious student organizations. This organization was denied official recognition so it could not use college facilities or be listed as a resource for students.

A religious student organization at a public university's school of law explained how their student organization, along with other religious organizations, were threatened with exclusion from campus because of their religious beliefs. The university eventually rescinded its proposed policy change that threatened these groups, but the university failed to adopt a written policy to assure religious groups that it would not someday adopt the detrimental policy. This commenter expressed how Federal regulations would help make a final decision for universities.

A representative from an on-campus religious student organization shared how they were actively involved with university service projects and complied with all university requirements set by the university. Yet twice, the organizations faced de-recognition because the religious student group required students to agree with the beliefs and mission of the religious organization. The group spent a year negotiating with the university to resolve the question, and the second time, it was necessary to procure help from State legislators to pass religious protections. This commenter supported expansion of these regulations on the Federal level.

One commenter recalled their involvement with a religious student group and how it was harassed by complaints and even kicked off many college campuses. The people complained that since the religious group required leaders to believe in their way of life that the religious group leaders were discriminating against other religions, so that religious groups would not be able to choose leaders who share their authentic religious beliefs. The commenter wants to see religious student groups treated equally.

One commenter shared that they learned that a public university's student government tried to de-recognize several religious student groups because the groups expected their leaders to agree with their beliefs. While the issue was forgotten for some time, it resurged and distracted the student group leadership from investing in their community.

A former member of a religious student group at a public university shared how the organization submitted its constitution for approval as a registered student organization, but it was rejected because the constitution suggested that student leaders had to agree with the group's fundamental beliefs. The commenter expressed that it appeared the administration was singling out this group because the purpose of the organization is religious. The university did allow the organization to register after a year of effort and forced the organization to change the wording of its constitution.

A current student at a public university shared how the commenter's university student government tried to stop religious student organizations from having faith-based criteria for their leaders. Several groups expressed concern that such a requirement would lead to singling out religious groups because other organizations could expect leaders to agree with their purposes, but religious groups could not because their purposes were religious. The administration had to override the student government and agreed that religious student groups could have religious requirements for their leaders.

One commenter, whose husband served as the staff sponsor for a campus Christian fellowship student club at a public university, recalled how their religious student group was banned from campus because of a State university system regulation that forbade student clubs from imposing ideological requirements on their student leaders. After communicating with the religious student group's parent organization, the chancellor of the university system recognized the unconstitutionality of its arbitrary requirement and allowed the club back on campus the following year.

Administrative Delay

A commenter from a public university's school of law shared that it took one year for the university to recognize the commenter's religious student group as a registered student organization; the delay was largely caused by confusion surrounding the organization's desire to have a statement of faith requirement for their board members. The organization felt this was necessary because many of its board members' duties outlined in the by-laws involved leading the group in prayer, worship, Bible studies, and fostering members' spiritual growth. The administration prolonged the decision because it stated that it would have to amend the school's organizational policies to permit faith-based student organizations to require such a statement of faith for board members. The organization was forced to navigate a bureaucratic maze to amend the university's underlying organizational documents and risked the inability to be recognized.

A student leader in a religious student group at a public university recalled how the university announced it was changing its policy so that religious student organizations could not require their leaders to agree with their religious beliefs. Only through official recognition, the commenter recalled, were religious groups able to partner with the atheist club, for example, to host events like public debates. After some struggle, the campus organization collaborated with the university to pass a policy which allowed religious groups to uphold standards for their leaders.

A member of a religious student organization at a law school commented that they attended an event at another local law school with students who had to change the name of their organization because of administrative hurdles.

Denying Access to Resources

A commenter from a public university shared how, on top of facing public criticism because of their beliefs, their religious student group faced administrative hurdles like a lengthy appeal process to get funding for an event that non-religious groups have never struggled to fund. A commenter who worked with a Catholic student group on more than 100 campuses across the U.S. shared how they have encountered resistance while bringing viewpoint diversity to college campuses. Their organizations had often been deprived from accessing campus facilities, funding, free speech, and even approval from the university based on their orthodox beliefs, even though these chapters help students to think critically and better prepare them for life.

A commenter shared how their religious sorority was allowed to collectively profess its faith while some sister chapters were unable to do so. They stated that difficulties have been caused by the organization's requirements for members to affirm basic religious beliefs, so the national organization had to eliminate the requirement that chapters achieve campus recognition. They stated that this was done to maintain the religious groups' convictions, but the consequences included organization members being unable to acquire space reservations on campus without fees, unable to advertise, and unable to affiliate themselves with the brand name of the university, among other complications.

A community member and advisor for a student organization at a public liberal arts college shared how some of the student leaders were told not to approach students on campus because of a solicitation policy which was enacted to restrict commercial speech or canvassing. The commenter stated that the university rewrote the policy based

on the religious organization's activities to target the group. The religious organization sent a letter from legal counsel to get the university to correct the overbreadth of its solicitation policy.

Other

A legal practitioner who has represented Christian ministries that have faced pressure or exclusion from the campus community because of the group's beliefs and the application of these beliefs to membership and leadership expressed concern about the ongoing confusion about religious organizations' rights.

A campus minister expressed support for the rule because, even though they worked at a private institution, they had seen their colleagues be discriminated against under the guise of nondiscrimination.

A commenter shared that religious student ministry at a public university was an outstanding example of contributing to the campus, yet religious student groups had been discriminated against for upholding and practicing religious teachings that the group espoused.

An attorney shared that they had heard many examples of student groups at the secondary, college and graduate levels who had encountered arbitrary and unfounded opposition from administrators and educators, including two cases reviewed by the U.S. Supreme Court. The commenter observed that the value of diversity has been used to disadvantage religious groups while it is applied more favorably to other groups. This commenter shared that confronting universities about discriminatory policies is expensive, confrontational and time-consuming which depletes resources that could be better used.

A political science professor wrote that they served as a faculty advisor for many of these organizations and had suffered through administrative discrimination and denial of privileges on campus.

Equal Treatment

A commenter expressed support because students need a sanctuary where they can practice their religious beliefs, like the sanctuary that other organizations afford. The commenter worried that culture exempts religious organizations from teachings about tolerance, and that religious organizations are not being treated equally according to the U.S. Constitution.

Commenters overwhelmingly stated that universities should provide services, spaces, and access to diverse student groups, including religious student groups, on an equal basis. Many commenters expressed that religious students must have equal rights in order for public universities to remain truly tolerant of all people and to protect diversity on campuses.

A commenter shared that universities should safeguard the environment in which students are supposed to express themselves freely, especially regarding freedom of religion. The commenter clarified that separation of church and state as conceived by America's Founding Fathers was not intended to silence religious expression.

A commenter stated that if religious student groups are not being treated equally, then this is discrimination and oppositional to the U.S. Constitution's protection of religious freedom.

Harms Suffered as a Result of Unequal Treatment

Several commenters wrote that stripping students' religious groups of their distinctiveness or kicking them off campus brings hardship and mental stress to students, making universities hostile to these students. Another commenter warned that when these religious groups are threatened by the university for their religious convictions, great stress and anxiety plague student members who then need to use their energy and resources not for studying but instead for fighting for space to exist on campus without harassment. This commenter also described how religious groups provide support and help for their members to be able to thrive as students. Another commenter added that religious student groups allow students to manage stress, while denying equal treatment to religious student groups brings hardship and mental stress. Another commenter wrote that religious student groups can develop students' moral compasses that can decrease depression, drug use, and anxiety that are so common on campus today. A licensed psychologist who formerly participated in a religious student group wrote that these organizations offer critical stress relief through community and provide support, care, and mentorship to the college students.

A commenter wrote that denying religious student groups equal treatment would disadvantage individuals of faith in their formation, expression and service with no benefit to those outside of the faith other than stunting their awareness of the diverse faith culture in which they participate. Another commenter wrote that to deprive and limit campus access is to ensure an education that will lack a capacity for compassion that has always stood ready to care for the nation's poor and to serve others in time of national calamity or regional crisis.

A national campus ministry wrote of the tremendous loss when a religious student group is refused registered status. They stated that such a group becomes essentially a second-class group, becomes more isolated, and loses credibility with students. It also often experiences considerable (and often prohibitive) financial costs, required to pay for the use of campus facilities that are made available to registered organizations at no cost. The campus community is harmed as well, because diversity is most rich when authentic belief-based expression by both individuals and groups is allowed to flourish.

Contribution to Diversity

Many commenters expressed support for the regulations because they would increase ideological diversity which contributes to a more robust university environment. Some commenters noted the significance of this since public institutions are taxpayer-funded. A significant number of commenters, including organizations that represent various religions stated that universities should be diverse and inclusive spaces for all students and should treat religions equally. These organizations supported the regulations so that religious student groups will be treated fairly. Several commenters clarified that diversity is only achieved when all religions are respected. Some commenters added that religious student groups have a distinctive need to be protected so that organizations can operate with integrity. Many commenters shared that allowing religious student groups to fully express their convictions uniquely contributes to campus diversity.

Many commenters expressed the value of diversity on campuses. One commenter stated that universities should be places where students grapple with different viewpoints, so allowing the diversity that religious student organizations bring would enhance cross-cultural and conflict conversation competencies. A commenter asserted that more diversity leads to a more balanced perspective at universities. A commenter shared that diversity and inclusion are fundamental to students' education and development and granting equal access to these religious student groups would aid diversity and inclusion on campuses. Additionally, a commenter added that diversity and inclusion are measured by how well an institution tolerates students whose opinions and life principles the

institution may disagree with and how they are allowed to practice those principles. Another commenter noted that religious diversity increases tolerance.

One commenter contended that an institution prevents diversity on campuses by not allowing religious student groups to practice their religion with integrity. One commenter stated that beliefs cannot be uniform among a freethinking people, so valuing safety over free expression will have a disparate impact on the nation's intelligence.

Many commenters supported the regulation to prevent discrimination against religious student groups seeking to live out their values. One commenter expressed concern over certain ideologies silencing religious, conservative ones. The commenter advocated for more diversity, fed by religious student groups' activity, to create greater diversity of belief, experience, and opinion ultimately to create a more robust university environment for the free exchange of ideas. One commenter expressed concern over their children's college environment where conservative students could face bullying, isolation, among other social repercussions, and emphasized that truly inclusive diversity is needed. Another commenter warned that religious student organizations should not be marginalized simply because other prominent ideologies in society disagree with them. One national women's organization expressed concern over discrimination against religious student groups and emphasized that religious student groups should be treated equally. They supported the new rule because they stated it would bring the Department in line with the President's Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities to protect the First Amendment rights of students of all faiths at public post-secondary institutions.

Social Benefits

A non-profit law firm stated that religion and the social networks and organizations surrounding it are crucial in transmitting civic norms and habits, such as belonging to a community organization, especially a health-related one, youth-serving organizations, neighborhood and civic associations, fraternal and service organizations, and even professional and labor groups.

A commenter wrote these clubs bring vibrancy and diversity of belief, opinion, and experience, creating a more robust university environment to engage in the free exchange of ideas. One commenter expressed the need for free speech and First Amendment protections and shared a 2010 survey of college students which found that only 36 percent agreed with the statement that ''it is safe to hold unpopular views on campus.'' This number drops to 30 percent for seniors, and only 16.7 percent of faculty agreed with the statement. The commenter elaborated that the free market of ideas sharpens students' critical thinking skills. They stated that protecting the First Amendment will save students and universities from costly litigation.

A commenter whose daughter participated in a religious student group shared that religious student groups are places where belief systems and cultures can be explored along with other intellectual pursuits. Another commenter noted how religious student groups afford students the opportunity to explore faith, examine and choose, as an adult, a path they may want to follow. An additional commenter wrote that the university experience is a key time for intellectual development and character formation, so diversity added from religious student groups is profitable to students. Many commenters underscored that students ought to be allowed to learn from a multiplicity of viewpoints to form their own convictions while forming common ground with and respect for other beliefs. They stated that all students need to be taught critical thinking and be exposed to all intellectual and religious ideas so that they can be intelligent, wise, and fair-minded individuals.

Other commenters emphasized how spiritual maturity is important in an educational environment where students are pursuing their future vocations.

A retired university professor supported the proposed regulations because they saw much growth in young people based on the open exchange of ideas, both in the classroom and through extra-curricular activities. The commenter advocated that the Department adopt these regulations so that religious student groups will have the ability to contribute to this exchange from their own religious identity and character.

A commenter wrote how religious student groups increase belonging on campuses. Religious student groups provide students with great encouragement and a place to feel they belong—this is especially needed and true for freshman that have left home and now have 800 people in their history class or 30,000 students on their campus. These religious student groups provide mentorship, leadership, and training. A different commenter stated these activities occur because of the religious organization's unique characteristics. Many commenters shared personal testimonies of how religious student groups created community and life-long friendships, especially amid stress. Another commenter clarified that these institutions are not riddled with hazing, sexual abuse, or similar scandals as are other college organizations. A commenter noted that groups like Hillel and InterVarsity serve important constituencies well in an increasingly polarized society. Another commenter wrote that student's religious and spiritual beliefs are a key part of their identity, and many have a strong desire to connect with other students who share their same identity, yet oftentimes religious student organizations are the most active organizations on campus, and the most welcoming to people of all (or no) spiritual background to their events and activities on campus.

Many commenters unpacked the benefits of spiritual development on students and the campus as a whole. One commenter observed spiritual development is critical to ensuring a stable future for our country. A commenter explained that spiritual development contributes to students' whole moral, conscious, and character growth. Another commenter shared how participation in a religious student group creates spiritual habits that often result in a lifetime of community service. Many commenters observed the community contributions religious student groups make through charity activities, giving, volunteerism, outreach to engage in civil services, etc. Other commenters shared the values that are promulgated by religious student groups including caring for others, community, temperance, leadership, community, justice, gratitude, prudence, and actually much more tolerance than those trying to eliminate them.

Another commenter who serves as a non-profit leader who works predominantly with students of color stated that they believe the community afforded by campus religious organizations significantly aid in the social and academic flourishing of all college students and especially those from historically marginalized communities. A commenter recalled how they had seen a religious student group help homeless students find shelter and food, emotionally hurting students find truth and healing, over-

achieving and perfectionistic students find grace, students who lack confidence become leaders of their peers, students take risks to start groups that encourage and support other students who were hurting, and students in general become more loving, competent, and contributing individuals.

Improvements to Educational Environment

One commenter supported the regulations because they stated they would inherently enhance the total cause of public education, and another commenter shared how university cultures are greatly enhanced by the presence of religious organizations. More specifically, a commenter believed one of the most important functions of our universities is to expose students to diverse ideas in order to understand the world and as a means of helping them learn to think logically and rigorously about ideas. Additionally, they stated that universities should help equip students to better discern truth from falsehood, fact from fiction, and wish from reality. Furthermore, a commenter shared that a thriving institution is one that supports a student's moral integrity, which is based upon religious beliefs and not simply academia, which would support student morale and campus well-being. Another commenter echoed the value of diversity, stating that universities are precisely a forum for exploring different and new ideas, and for deepening knowledge in areas of interest. Developing one's own spirituality helps human beings cope better with life's stresses, and religious groups may provide just that support to students on campus.

Concerns With Government Interference or Entanglement

A commenter observed that universities denying religious organizations the ability to impose moral criteria effectively bans the organization. Another commenter expressed discontent over State university administrators deciding which religious student groups are allowed or excluded.

Another commenter stated that these regulations would support the constitutional rights guaranteed under the Establishment Clause—government officials never should be allowed to dictate to religious groups their leadership standards, and government officials should never be able or allowed to penalize religious groups because of their religious beliefs and speech. Commenters stated that a national standard, codified by these regulations, would provide consistent protection for students' speech and religious freedom regardless of which State a student chooses to move to in order to attend college. Another commenter expanded on the argument that universities should not be picking which groups can receive equal treatment, since public university administrators and faculty are on the public payroll. The commenter stated that they administer public funds, yet they use taxpayer money against members of the public when they (a) deny approval for a group of Christian students to meet in a building on campus, (b) revoke approval to post notices of their events on campus bulletin boards, (c) require sponsorship by a member of the faculty in order to exist on campus, or (d) exclude the group from receiving a share of the distribution of student activity fee revenues because of the group's religious nature. Another religious student group expressed support that the proposed regulations would emphasize that no religion-based discrimination against faith-based entities will be accepted at any stage of the funding process.

Many commenters expressed concern over increasing intolerance of free speech and religious viewpoints which may deviate from mainstream thought on college campuses, noting that many colleges have shown intolerance towards religious organizations by driving them off campuses. Many commenters identified Jewish, Muslim, Catholic, and Protestant organizations, in particular, as targets of religious discrimination. Several commenters posed that university officials were penalizing religious groups specifically because of their beliefs and speech, so they were dictating their leadership standards to the religious groups. A commenter argued that such penalization and dictation of leadership standards violated the Establishment Clause. A few other commenters suggested that students were physically at risk when speaking controversial viewpoints and are not always protected by campus security, so they supported these regulations to provide support and protection to these groups. Another commenter shared that among many other clubs that select leadership based on the alignment with a code of conduct or set of beliefs, people of faith, alone, have been singled out by universities and harassed on the basis of those beliefs. A commenter stated that seemingly offensive speech is not a justification for institutions of higher education which receive Federal funds to disrespect fundamental First Amendment rights and that the State cannot choose which morality and ideologies it allows. Another commenter added government should neither favor nor oppose religion, so public academic institutions should be handling religious issues exactly the same way as the government, in a completely neutral fashion.

One non-profit organization that supports campus ministries across the United States supported non-discrimination policies and believes that they should be used to protect against invidious discrimination. They stated that non-discrimination requirements should protect, rather than penalize, religious groups that want to retain their distinct religious character. This organization strongly supported the proposed regulations because student organizations need protection from administrative overreach by universities and colleges. According to this organization, the proposed regulations, thus, strengthen current non-discrimination policies.

Another commenter expressed that for a college to kick a group off campus unless they allow leaders who contest the very principles for which the group stands, is a surefire way to destroy religious liberty on campus. The commenter stated that not only are such campus policies unfair to religious groups (and such policies have typically arisen from a desire to single out such groups), but such policies deprive people of their First Amendment rights.

A commenter wrote that denying a religious organization access to a public campus may impede growth toward religion while growth away from religion continues unfettered; this creates a bias against religion and impedes students' religious freedoms. This commenter stated that derecognition is a punitive action and derecognizing religious organizations on public college campuses is a violation of religious freedom.

One commenter expressed strong concerns about anti-conservative, religious bias in America that is being manifested on U.S. campuses, including destruction of property and heckling, among other problems.

Religious Integrity

A significant number of commenters shared that universities do themselves and their students a disservice when a religious student group's ability to retain their distinct religious identity and character is hindered and the group is discriminated against on the basis of religious conviction. The commenters stated that religious student groups make their best contribution to campus

life when they retain their distinct religious identity and character. They contended that the proposed regulations would make that possible on every public campus.

Many commenters expressed that a religious institution should be allowed the freedom to uphold the values it holds close in regard to who it hires, fires, and what activities are allowed on campus based on the particular tenets of their faith practice, corresponding with the value that America places on freedom of religion. They stated that student organizations on college and university campuses should be able to select leaders who share the organizations' goals and mission. But they also noted that religious groups, including Jewish, Muslim, and Catholic student organizations, have been discriminated against for requiring that their leaders uphold and practice the religious teachings that the group espouses.

Many commenters drew analogies regarding organizations' right to choose leadership that reflects their values, priorities, or skills. For example, one commenter drew the analogy that a male football team would not be led by a woman, a female acapella group is not led by a man, Phi Beta Kappa is not led by someone with poor grades. Further, this commenter observed that groups like Phi Beta Kappa are not criticized for discriminating based on intelligence nor fraternities or acapella groups for excluding membership based on sex, so religious organizations should not be considered any differently.

Another commenter supported these proposed regulations and noted that under Title VII of the Civil Rights Act of 1964 (''Title VII''), if a factor such as religion, sex, or national origin, etc., is reasonably necessary in the normal operation of an organization to carry out a particular job function, then that factor is bona fide occupational qualification, and the use of such a factor is not considered discriminatory. A commenter supported the proposed regulations because setting standards for the leaders of our organizations, whether religious or secular, is the best measure to protect the core values, character and mission of such organizations. This commenter stated that a scientific society would quickly lose effectiveness and credibility if it allowed its leadership to be infiltrated by those who do not believe or subscribe to the ''scientific method'' as the best course for research and scientific discovery. Another commenter noted that leaders sharing basic convictions of the religious organization allowed the commenter to understand the organization and expect consistency. According to this commenter, leadership sharing these convictions allows for the organization to build upon common ground and grow. The national director of a major nonprofit and interdenominational campus ministry operating hundreds of groups at campuses across the U.S. supported the proposed regulations for reasons related to religious integrity because these proposed regulations recognize the value of association around common interests, reflect protections afforded other associative groups at universities, and affirm that an associative group can and should be led by those who fully agree with the purpose(s) of the group.

A non-profit law firm elaborated that because personnel is policy, any organization dedicated to advancing a particular cause must ensure that those who lead it are actually committed to that cause. Thus, organizations dedicated to advancing a particular cause, whether the College Democrats, the College Republicans, the Christian Medical Association, Chabad on Campus, or any other group formed around a common cause or belief should be permitted to maintain membership and leadership standards that ensure the common cause is furthered.

Another commenter shared that religious organizations' values and beliefs, particularly, make them positive contributors to campus life, so the proposed regulations, which would extend equal treatment to religious student groups, would make the public campus a welcoming environment for all.

A commenter wrote that, based on many conversations they had over the past few years, the ability of each group to retain that its unique religious identity can only be truly protected by regulations such as this—to once and for all end the discrimination that too often happens and lessen the fear of lawsuits if institutions try to protect groups that others want to keep off campus. Another commenter added that further legal protection is needed for religious student groups, given the polarized climate.

Another commenter reflected that faith and interfaith groups have become increasingly sponsored and promoted in the workplace as a part of a larger diversity and inclusion measure. Since universities educate tomorrow's workers, universities should mirror these trends and provide students the opportunity to explore faith during their formative years.

A commenter stated that having a diversity of groups requires organizations being able to elect their own leaders. This commenter also stated that the Establishment Clause is violated when government officials dictate to religious groups their leadership standards or when such officials penalize religious groups because of their religious beliefs and speech.

One commenter reasoned that denying religious groups their identities makes every organization equal if it is not able to express its core values and beliefs and that having such groups increases understanding and acceptance while allowing college students to grow.

One particular religious group strongly supported the regulations because they support the right of student organizations to maintain core religious beliefs as necessary for group membership and leadership. They contended that students do not lose constitutional rights simply because they step onto a college campus. Public university officials abridge the guarantees of the First Amendment when they limit students' ability to freely assemble and gather around their most deeply held beliefs.

One commenter wrote in support of the proposed rules because education is an area of significant importance in Judaism, and they believe that these proposed rules would help foster a better environment in which Jewish Americans can educate their children. They argued that the proposed regulations would also play an important role in safeguarding the rights of Jewish student organizations on public college campuses.

One commenter reasoned that removing membership/leadership qualifications gives space for leaders with dangerous motives (such as someone seeking to manipulate others) to enter a leadership position, posing a risk to belief-based organizations.

Clarity

A significant number of commenters expressed support for the proposed regulations because they would clarify longstanding confusion over religious organizations' role and rights on university campuses. They noted how these regulations would add clarity for both religious organizations and campus administrators by instituting clear standards.

Discussion: The Department appreciates these comments in support and agrees that religious student organizations play an important role at public institutions of higher education. The Department revises §§ 75.500(d) and 76.500(d) to expressly note that the provisions, concerning religious student

organizations, constitute material conditions of the Department's grants. The Department consistently characterized the provisions in §§ 75.500(d) and 76.500(d) in the NPRM as material conditions.[56] The tremendous amount of support for these provisions demonstrates that these regulations are indeed material and necessary to reinforce First Amendment freedoms at public institutions. The Department has revised its other provisions in §§ 75.500(b)–(c) and 76.500(b)–(c) regarding compliance with the First Amendment for public institutions and freedom of speech, including academic freedom, for private institutions to reflect that these provisions are material conditions, consistent with the characterization of these provisions in the NPRM. The Department wishes to note that all of the provisions in §§ 75.500 and 76.500 promulgated through these final regulations are material conditions.

Additionally, commenters described a myriad of ways in which public institutions may treat religious student organizations differently than other student organizations. In response to these comments, the Department revised the parenthetical in §§ 75.500(d) and 76.500(d) that includes a non-exhaustive list of examples of how a public institution may deny a religious organization a right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution. As commenters raised the issue of public institutions denying religious student organizations student fee funds provided to other student organizations and as the Supreme Court of the United States decisively ruled on the distribution of student fee funds to religious student organizations in *Rosenberger* v. *Rector & Visitors of the University of Virginia,*[57] the Department revises the parenthetical to include distribution of student fee funds as one way in which a public institution may treat a religious student organization differently than other student organizations.

Changes: The Department revises §§ 75.500(d) and 76.500(d) to state that the provisions related to religious student organizations at public institutions constitute a material condition of the grant. The Department also revises the parentheticals in §§ 75.500(d) and 76.500(d) that include a non-exhaustive list of examples of how a public institution may deny a religious organization a right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution. The Department specifically includes distribution of student fee funds in this non-exhaustive list. The Department makes a technical correction in § 75.500(d) to refer to grantees that are public institutions to align with the language in the remainder of § 75.500. The Department makes a technical correction to § 76.500(d) to refer to States or subgrantees that are public institutions to align with the language in the remainder of § 76.500(d).

Comments in Opposition

Separation of Church and State & Concerns Under the Establishment Clause of the First Amendment

Comments: Several commenters asserted that the proposed regulation pertaining to religious student organizations violates the Establishment Clause. One commenter argued that the Establishment Clause bars the government from making accommodations for religion that impose significant burdens on third parties, such as students or nonreligious organizations. Another commenter stated that the final regulation would expand the allowable use of Federal financial assistance to support religious instruction, worship, and proselytization. The commenter noted that the First Amendment prohibits the government from directly funding religious instruction, worship, and proselytization, as the Supreme Court held in *Locke* v. *Davey*.[58] Other commenters maintained that any organization that makes the choice to exclude classes of people based on religion, race, gender identity, or sexual orientation should not receive public tax dollars.

One commenter who identified as a former Episcopal chaplain at a large public university stated that this commenter's campus ministry included a student organization recognized by the university. This commenter noted, however, that there was no expectation that the university help fund the chaplain's ministry and that the funding came entirely through the Episcopal church. This commenter further noted that other campus ministries at that university used this same approach to separation of church and state and advocated that the Department maintain such a separation. Commenters also argued that, because we live in a pluralistic society, it is inappropriate for publicly funded institutions to fund religious student organizations at all. Commenters maintained that no public funds should support religious student organizations, but rather, churches alone should fund such student groups. These commenters argued that Thomas Jefferson's ''wall of separation'' is more important than ever in our diverse world. Commenters also stated that the Constitution demands that our children's ability to get an education must never depend on whether they share the religious beliefs of any government-funded organization.

Commenters also contended that the religious exemption violates the Establishment Clause's prohibition on government promotion or advancement of religion. According to this commenter, in *Corporation of Presiding Bishop* v. *Amos,* the Supreme Court explained that the Title VII exemption allows ''churches to advance religion,'' which does not violate the Constitution.[59] The commenter contended that the case would have been different had ''the government itself . . . advanced religion through its own activities and influence.'' [60] The commenter concluded that unlike in *Amos,* here the government itself is involved.

Discussion: The Department disagrees with commenters who state that the regulation violates the Establishment Clause. It is a well-established principle that public institutions may provide benefits to religious student organizations without running afoul of the First Amendment. Indeed, ''[i]f the Establishment Clause barred the extension of general benefits to religious groups, a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair.'' [61] More specifically, ''the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and evenhanded policies to extend benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse[.]'' [62]

[56] *See, e.g.,* 85 FR 3191, 3199, 3214.

[57] 515 U.S. 819 (1995).

[58] *Locke* v. *Davey,* 540 U.S. 712 (2004).

[59] 483 U.S. 327, 337 (1987).

[60] *Id.*

[61] *Widmar* v. *Vincent,* 454 U.S. 263, 274–75 (1981) (internal quotation marks and citation omitted); *Espinoza* v. *Montana Dep't of Revenue,* 140 S. Ct. 2246, 2254 (2020) (''We have repeatedly held that the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs.'').

[62] *Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 820–21 (1995) (citation omitted); *see also Widmar,* 454 U.S. at 274 (internal quotation marks removed) (''[A]n open forum in a public university does not confer any imprimatur of state approval on religious sects or practices. As the Court of Appeals quite aptly stated, such a policy would no more commit the University . . . to religious goals than it is now committed to the goals

Continued

Not only is providing benefits to religious student organizations permitted under the Establishment Clause, but withholding benefits from religious student organizations because of their viewpoint or religious character is forbidden under the First Amendment, as the Supreme Court has repeatedly recognized in cases involving institutions of higher education.[63]

Moreover, §§ 75.500(d) and 76.500(d) strengthen the wall of separation between church and state by preventing public university administrators from violating the First Amendment by interfering with religious beliefs or becoming entangled with religion. The Supreme Court has found this kind of interference unconstitutional, like in the case of *Widmar* v. *Vincent,*[64] in which the Court struck down a university policy excluding all religious groups from using school facilities. The Court observed that ''the University would risk greater 'entanglement' '' between church and state because ''the University would need to determine which words and activities fall within 'religious worship and religious teaching.' '' [65] Similarly, it is improper for universities to decide what constitutes religious qualifications, or to determine which religious qualifications are acceptable. Indeed, ''[a]ccording the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause.'' [66]

The Department notes that the final rule will not impose constitutionally significant burdens on third parties. First, the rule mandates equal treatment for religious student organizations as compared to their secular counterparts; these final regulations do not favor or disfavor religious student organizations or any particular religion. Second, the U.S. Constitution does not prohibit religious student organizations from excluding students from leadership because they do not meet an organization's religious qualifications, even though such exclusion may be potentially inconvenient or disappointing. Such exclusion under these final regulations is a permissible distinction based on religious belief or conduct. The alternative—requiring faith-based groups to forgo their religious tenets when selecting leadership—violates their freedoms of speech, association, and free exercise. The First Amendment requires public institutions of higher education to refrain from infringing on this ecosystem of liberties unless a public institution adopts a true all-comers policy as explained in the ''All-Comers' Policies for Student Organizations'' section, below.

Additionally, §§ 75.500(d) and 76.500(d) support, rather than hinder, pluralism, as these regulations prevent public institutions from suppressing or discriminating against ideas in an academic setting. These final regulations ensure that institutions of higher education comply with Congress' mandate to ''facilitate the free and open exchange of ideas'' and prevent students from being ''intimidated, harassed, [or] discouraged from speaking out, or discriminated against'' on account of their speech, ideas or expression.[67] The Department thus disagrees with commenters who opined that the rule requires children to share the religious beliefs of a government-funded organization in order to obtain an education. Instead, §§ 75.500(d) and 76.500(d)—which deal exclusively with student organizations, not the school's curriculum—increases the range of religious and ideological diversity to which students are exposed.

The Department notes that existing §§ 75.532 and 76.532 strictly prohibit any State, grantee, or subgrantee from using its grant to pay for religious worship, instruction, or proselytization. These final regulations do not alter §§ 75.532 and 76.532 in any way. Assuming *arguendo* that the holding in *Locke* v. *Davey* requires such restrictions, the Department's existing regulations are consistent with the restrictions that the commenter believes *Locke* requires. The Department's existing regulations, thus, ensure that grants are not used in violation of the Establishment Clause.

Lastly, these final regulations are not contrary to the Establishment Clause principles established in *Corporation of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos* because the government is not using its activities or influence to advance or promote religion, but is instead requiring public institutions not to deny to religious student organizations any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution. It accomplishes exactly what *Corporation of the Presiding Bishop* ruled was permissible: Allowing a religious group to exercise its religion without government interference.[68] As the Supreme Court stated: ''A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose.'' [69]

Changes: None.

''All-Comers'' Policies for Student Organizations

Comments: Several commenters opposed the changes to §§ 75.500(d) and 76.500(d) because they contended colleges have the right to require all student organizations, religious or nonreligious, to comply with nondiscrimination policies to receive funding or recognition in accordance with the holding in *Christian Legal Society* v. *Martinez.*[70] Other commenters contended that the Department should not bar schools from applying neutral, generally applicable policies to religious student organizations. Commenters argued that it is inappropriate for the executive branch to foreclose all-comers policies by public colleges and universities. These commenters argued that these policy decisions are best left to institutions as informed by their own State laws.

Many commenters noted that in *Martinez,* the Supreme Court upheld as constitutional a public university's all-comers policy that required student groups seeking official recognition to allow any student to join and participate in that group, including in elections for leadership positions. The Court held that such policies do not violate the free speech, expressive association, and free exercise rights of the students.[71] The Court also concluded that all-comers policies do not violate the Free Exercise Clause.[72] Rejecting the argument that such policies target religion, the Court explained that exempting religious groups from all-comers policies would provide them ''preferential, not equal, treatment.'' [73]

Commenters also remarked that the proposed regulations would mandate the very same preferential treatment for religious student organizations that the Supreme Court held was not necessary in *Martinez.* Commenters noted that in *Martinez,* the Supreme Court held that where a school implements a nondiscrimination policy requiring

of the Students for a Democratic Society, the Young Socialist Alliance, or any other group eligible to use its facilities.'').

[63] *Rosenberger,* 515 U.S. at 846; *Healy* v. *James,* 408 U.S. 169, 194 (1972); *Widmar,* 454 U.S. at 277; *see also Martinez,* 561 U.S. at 685.

[64] *Widmar,* 454 U.S. at 274–75.

[65] *Id.* at 272, n.11.

[66] *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.,* 565 U.S. 171, 188–89 (2012).

[67] 20 U.S.C. 1011a(2)(C)–(D).

[68] *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos,* 483 U.S. 327, 337 (1987).

[69] *Id.*

[70] 561 U.S. 661 (2010).

[71] *Id.* at 683.

[72] *Id.* at 697 n.27.

[73] *Id.*

official, school-funded student groups to accept ''all-comers,'' the policy is a reasonable, viewpoint neutral condition governing the formal recognition of student organizations.[74] According to commenters, in *Martinez* the Christian Legal Society argued that being required to accept members who did not share the organization's core beliefs about religion and sexual orientation violated First Amendment rights to free speech, expressive association, and free exercise of religion.[75] The commenters asserted the Court recognized that it is ''hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers'',[76] and that what the group actually sought was ''not parity with other organizations, but a preferential exemption from [the school's] policy.'' [77]

Discussion: In *Christian Legal Society* v. *Martinez,* the Supreme Court considered a policy that ''mandated acceptance of all comers'' meaning that ''[s]chool-approved groups must 'allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [her] status or beliefs.' '' [78] The Department emphasizes that §§ 75.500(d) and 76.500(d) are consistent with the holding in *Martinez,* as these regulations do not prohibit public colleges and universities from implementing all-comers policies, nor do they bar these institutions from applying neutral, generally applicable policies to religious student organizations. By its very definition, a neutral policy of general applicability binds *all* organizations, and thus is permissible under §§ 75.500(d) and 76.500(d); therefore, an authentic all-comers policy would be neutral and generally applicable.

Under the stipulated facts of *Martinez,* the policy applied to all 60 groups on campus, including ''political groups (*e.g.,* the . . . Democratic Caucus and the . . . Republicans), religious groups (*e.g.,* the . . . Jewish Law Students Association and the . . . Association of Muslim Law Students), groups that promote[d] social causes (*e.g.,* both pro-choice and pro-life groups), groups organized around racial or ethnic identity (*e.g.,* the Black Law Students Association, the Korean American Law Society, La Raza Law Students Association, and the Middle Eastern Law Students Association), and groups that focus[ed] on gender or sexuality (*e.g.,* the Clara Foltz Feminist Association and Students Raising Consciousness at Hastings).'' [79] The implications of such a policy were that ''the . . . Democratic Caucus cannot bar students holding Republican political beliefs from becoming members or seeking leadership positions in the organization.'' [80] With respect to a true all-comers policy, pro-choice groups could not bar leadership positions from pro-life individuals; Muslim groups could not bar leadership positions from non-Muslims; the feminist group could not bar leadership positions from misogynists; and so on. Such a policy is constitutional under *Martinez,* but is not required by the U.S. Constitution or under the holding in *Martinez.* Indeed, many public institutions of higher education elect not to implement true all-comers policies due to these obvious practical difficulties.

The final regulations would not, as one commenter suggested, mandate preferential treatment for religious student organizations. In *Martinez,* the religious student organization sought ''not parity with other organizations, but a preferential exemption from [the institution's all-comers] policy.'' [81] Here, the Department requires parity among all organizations. A public institution of higher education may adopt a generally applicable policy, such as an authentic all-comers policy, which applies equally to *all* student organizations and which requires all student organizations to allow any student to participate, become a member, or seek leadership positions in the organization, regardless of the student's status or beliefs. A public institution also may adopt a generally applicable policy that allows *all* student organizations to set their own qualifications for membership and leadership. A public institution also may adopt other types of generally applicable policies with respect to student organizations as long as such policies apply equally to all student organizations, including religious student organizations. None of these scenarios give religious student organizations an exemption or preferential treatment, but merely equal treatment, which is required under the First Amendment.

Ultimately, §§ 75.500(d) and 76.500(d) clarify that public institutions allowing student organizations to restrict membership or hold certain standards for leadership may not implement non-neutral policies that single out religious student organizations for unfavorable treatment. Numerous public commenters described instances in which disfavored treatment of religious student organizations occurs daily on college campuses nationwide, demonstrating the need for such a rule. Public institutions remain free to adopt generally applicable membership policies, such as an all-comers policy, but a public institution may not selectively enforce its policies to target religious student organizations so as to deny them any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution.

Changes: None.

Religious Student Organizations Should Not Receive Special Protection or Receive Preferential Treatment

Comments: Several commenters opposed the final regulations because, by not expanding the exception to other groups with specific viewpoints such as political or affinity groups, they stated the proposed regulations would allegedly grant faith-based student organizations preferential treatment. One commenter noted that student organizations at public colleges and universities constitute a public forum, and that, while these institutions may not discriminate based on viewpoint, they also cannot favor some viewpoints by granting special exemptions only to religious organizations.

Numerous commenters also contended that schools should fund only those groups that serve ''the common good'' on their campus. Several commenters opined that ''strict sectarian groups'' do not support the common good. One commenter opined that a religious student group that believes in creationism or a flat Earth should not be equally eligible for money as a physics club. Another commenter contended that, by promulgating this regulation, the Department is attacking science, and the commenter predicted that such attacks will ultimately damage the nation's economy. Commenters also stated that the Department must not require colleges and universities to fund groups that contradict accepted science or discriminate against select groups of students such as LBGTQ+ individuals, racial minorities, or any other recognized group. Other commenters suggested that religious students are not the students that government programs are ''actually intended'' to help, that religious student groups should refrain from proselytization, and that religious groups experience disfavored treatment because they do not truly work ''for the good of all humanity.''

[74] *Id.* at 669.

[75] *Id.* at 668.

[76] *Id.* at 694.

[77] *Id.* at 669.

[78] *Id.* at 671 (citations omitted).

[79] *Id.* at 709.

[80] *Id.* at 675.

[81] *Id.* at 669.

Commenters opined that the final regulations would allow any religiously affiliated student organization to blackmail universities by claiming to be discriminated against if they did not receive money from their university each time they requested it. Several commenters remarked that schools should be able to discipline student organizations that practice exclusion and bias. Commenters also claimed that, if religious student organizations truly work for the good of all humanity as they say they do, such groups would not proselytize or discriminate against anyone, and therefore they would have no need for these final regulations.

Discussion: The Department reiterates that the final regulations do not mandate preferential treatment for faith-based student organizations; instead, the regulatory text requires that religious student organizations not be denied benefits given to any other student group because of their religious nature. Therefore, rather than giving religious student organizations special treatment, the regulation explicitly requires the opposite outcome—that religious student organizations at public institutions be afforded equal treatment.

Indeed, the substance of the numerous oppositional comments confirmed the need for a final rule requiring equal treatment for religious groups. First, contrary to the commenters who opined that religious student organizations do not contribute to the common good, the Department received a tremendous number of comments from students who had benefited personally, academically, and professionally because of participation in religious student groups. These commenters also described numerous ways in which their communities benefited because of service projects carried out by these religious student groups.

Second, while the Department understands that not everyone agrees with the mission or beliefs of religious student organizations, the First Amendment requires public institutions of higher education to refrain from content-based or viewpoint discrimination under the Free Speech Clause and to protect the free exercise of religion under the Free Exercise Clause. Indeed, the Supreme Court has held that ''[s]tate power,'' which public institutions wield, ''is no more to be used so as to handicap religions than it is to favor them.'' [82] Likewise, the Constitution ''forbids hostility'' toward ''all religions,'' [83] and discrimination in response to the exercise of a fundamental right—here, by religious student organizations—triggers strict scrutiny under the Equal Protection Clause.[84] Making religious student groups' funding contingent on whether they believe in creationism—or any other religious belief—is forbidden, as the Supreme Court has repeatedly held.[85] Thus, contrary to the arguments of these commenters, religious student organizations, regardless of their religious beliefs, are entitled to the same general benefits as other secular organizations under the First Amendment. Neither the religious group nor the science club should be silenced.

Further, §§ 75.500(d) and 76.500(d) do not enable religious student organizations to discriminate on the basis of protected classes, such as race or sex. It simply allows them to create leadership or membership qualifications based on religious tenets or standards of conduct informed by their religion. Disciplining these organizations for exercising their First Amendment rights, as suggested by one commenter, is forbidden by the Constitution. Further, whether or not a religious group engages in proselytization is not relevant to whether there is a need for these final regulations. The overwhelming number of comments in support of these final regulations demonstrate that there are instances in which religious student organizations are treated unequally and discriminated against on college campuses, and support our determination that these final regulations are necessary to remedy such discrimination against religious student organizations.

Religious student organizations would not be empowered to ''blackmail'' universities by ''claiming'' discrimination each time they failed to receive money. If, in fact, a public institution of higher education does not provide religious student organizations a public benefit that is generally available to secular organizations because of the religious character of the student organization, then it *is* engaging in discrimination prohibited by these final regulations and the principles established by the Supreme Court in *Trinity* [86] and *Espinoza.*[87] However, withholding funds from any student organization under a neutral rule of general applicability is not constitutionally suspect or prohibited under these final regulations.[88]

Finally, the Department disagrees that these final regulations will damage the economy. As discussed comprehensively in the NPRM, the Department has analyzed the costs and benefits of complying with these regulations. We concluded that the regulations impose approximately $297,770 in costs in Year 1, and we are issuing them on a reasoned determination that their benefits justify their costs. Further, we do not believe that the final regulations will result in any significant costs to the Federal government, general public, or recipients of support under the affected programs. If public institutions treat religious student organizations and other student organizations equally, then these public institutions will avoid liability for First Amendment violations, which may even result in a cost savings.

Changes: None.

The Proposed Regulations Will Allow Discrimination Against Certain Groups of Students

Comments: Several commenters maintained that the proposed regulations are ''dangerous'' and ''harmful'' to LGBTQ+ students, women and girls, religious minority students, and ''many others.'' One commenter stated that the changes proposed by the Department are un-Christian and would reward bigotry and hatred by creating a religious right to discriminate against vulnerable groups. Some commenters who identified as parents of LGBTQ+ students opposed these proposed regulations. These commenters were concerned that powerful religious groups in the U.S. would persecute and harm their children openly because these groups fear no reprisal from the government. These commenters also noted that LGBTQ+ students should have the same rights as other students and not be pushed back into more separation.

Commenters also asserted that the proposed regulations fail to address the harm that such an exemption would pose for students who would face discrimination by school-sanctioned student groups. These commenters noted that, because of the central role that access to education plays in

[82] *Everson* v. *Bd. of Educ.,* 330 U.S. 1, 18 (1947).

[83] *Lynch* v. *Donnelly,* 465 U.S. 668, 673 (1984).

[84] *See Clark* v. *Jeter,* 486 U.S. 456, 461 (1988).

[85] *Rosenberger,* 515 U.S. at 846; *Healy,* 408 U.S. at 194; *Widmar,* 454 U.S. at 277.

[86] *Trinity Lutheran,* 137 S. Ct. at 2021–22 (holding unconstitutional a policy forcing a religious institution to choose between ''participat[ing] in an otherwise available benefit program or remain[ing] a religious institution'').

[87] *Espinoza,* 140 S. Ct. at 2261 (application of State's no-aid provision violated the Free Exercise Clause by ''cutting families off from otherwise available benefits if they choose a religious private school rather than a secular one'').

[88] RFRA applies to the Department when there is a substantial burden, even if the burden results from a rule of general applicability. 42 U.S.C. 2000bb–1.

personal and professional development, eliminating discrimination in education has long been recognized as a governmental interest of the utmost importance. They cited Supreme Court precedent to support their positions.[89] One commenter stressed the long history of student groups serving as vehicles for discrimination, preventing marginalized students from being fully integrated into student life on university campuses across the country.[90] The commenter claimed that the Department's proposed regulations would return public university campuses to a shameful era in which public universities broadly countenanced discrimination against vulnerable groups of students.

Several commenters opined that the Department is using religious liberty as an excuse to discriminate or hurt other students. Commenters suggested that the Department seems to have proposed these regulations because the Department desires to attack LGBTQ+ students and promote bigotry on university campuses. A commenter suggested that the employees at the Department who helped work on the proposed regulations should move to a theocratic government overseas such as Saudi Arabia or Israel. Several commenters remarked that the Department, by proposing these regulations, is forcing the beliefs of older, white, upper-middle class conservative Christians onto the rest of America.

One commenter stated that the government should never fund discrimination, and that allowing such discrimination raises constitutional concerns. This commenter asserted that the government has a ''constitutional obligation'' to ''steer clear, . . . of giving significant aid to institutions that practice racial or other invidious discrimination.'' [91]

Discussion: The Department disagrees with commenters who state that the final regulations will promote discrimination, bigotry, and hate on college campuses. The Department is not espousing any religious beliefs and is instead requiring public institutions not to discriminate against religious student organizations, no matter what their religious beliefs may be. These final regulations apply to religious student organizations, including religious minorities and religious groups that have endured persecution. The overwhelming number of comments received in support of these final regulations regarding religious student organizations and recent case law about religious student organizations being denied the rights and benefits afforded to other student organizations at public institutions demonstrate these final regulations are indeed necessary.[92]

Religious freedom, by its definition, promotes tolerance and pluralism because it protects the right of individuals and groups to obey their conscience even when their conscience is at odds with popular beliefs and practices. Additionally, religious freedom constrains State action that would otherwise seek to enforce uniformity of thought or silence dissent. Thus, requiring public institutions to recognize students' First Amendment rights to speech, association, and free exercise will foster a culture that is *more* welcoming of various viewpoints and lifestyles, not less. Accordingly, the Department does not desire to attack any group but instead intends to encourage coexistence among a wide variety of organizations and viewpoints. This will help, not harm, LGBTQ+ students, women, religious minorities, and student organizations of all kinds. Indeed, LGBTQ+ students would be able to organize student organizations that limited membership to only students who identify as LGBTQ+, if a public institution of higher education adopted a generally applicable policy that allowed all student organizations to promulgate membership criteria.

The Department remains committed to eliminating invidious discrimination in the educational setting and vigorously enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin, as well as Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex. However, the Department clarifies that excluding individuals from leadership in a student group because of their *beliefs* or *conduct* is not comparable to using the ''constitutionally suspect criteria'' of a protected characteristic such as *race* when forming school policies—which is what the Supreme Court struck down in *Norwood* and *Bob Jones University*.[93] As noted above in the comments in support of these final regulations, many commenters described policies in which their religious student organizations required leaders, regardless of their race or sex, to either espouse certain religious *beliefs* or to *conduct* themselves according to the tenets of their faith. Nevertheless, many of these groups were denied recognition by their institutions because of alleged ''discrimination.'' These comments demonstrate that, rather than using religious liberty to further discrimination, institutions are using ''tolerance'' as an excuse to hurt religious organizations. Depriving student groups of their rights in the name of ''anti-discrimination'' furthers *religious* discrimination itself, which the Constitution does not tolerate.

The Department does not agree with commenters who suggest that the final regulations reflect a theocratic form of government or are an attempt to force the beliefs of older, white, upper-middle class conservative Christians onto the rest of America. The purpose of the final rule is not to favor a certain viewpoint, but to reestablish neutrality on campuses, which is what the First Amendment requires. Moreover, with neutrality comes ideological and religious pluralism, which is healthy for a democratic society.

The final regulations are intended to protect religious organizations from unconstitutional action stemming from the disapproval of a particular religion or of religion in general.[94] Bias against religion and religious student organizations is a growing problem as many commenters noted that public institutions have become increasingly less diverse and more hostile towards religious student organizations. This trend is caused by institutions moving away from the First Amendment and seeking to establish viewpoint uniformity, which is not good for those in the minority *or* the majority.

Ultimately, the final regulations will ensure that religious student organizations will not be coerced by university administrators to abandon their sincerely held beliefs in lieu of prevailing opinions on college campuses. It will restore to religious student organizations the ability to

[89] *See, e.g., Norwood* v. *Harrison,* 413 U.S. 455, 469 (1973) (holding that Mississippi could not give textbooks to students attending racially segregated private schools because ''discriminatory treatment exerts a pervasive influence on the entire educational process''); *see also, e.g., Bob Jones Univ.* v. *United States,* 461 U.S. 574, 604 (1983) (footnote omitted) (''[T]he Government has a fundamental, overriding interest in eradicating racial discrimination in education. . . .'')

[90] Commenter cited the Brief of Amicus Curiae of the ACLU et al. at 10–12, *Christian Legal Soc'y,* 561 U.S. 661 (Mar. 15, 2010).

[91] *Norwood,* 413 U.S. at 465–66.

[92] *InterVarsity Christian Fellowship/USA* v. *Univ. of Iowa,* 408 F. Supp. 3d 960 (S.D. Iowa 2019) (currently on appeal to the U.S. Court of Appeals for the 8th Circuit); *Bus. Leaders in Christ* v. *Univ. of Iowa,* 360 F. Supp. 3d 885, 899 (S.D. Iowa 2019) (currently on appeal to the U.S. Court of Appeals for the 8th Circuit).

[93] *Norwood,* 413 U.S. at 469; *Bob Jones Univ.,* 461 U.S. at 604.

[94] *Lukumi,* 508 U.S. at 532 (''[T]he First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general.'').

participate at public institutions of higher education on equal footing with all student organizations without disadvantaging or harming any students or organizations.

Changes: None.

The Proposed Regulations Are Not Required by Law or Allegedly Violate the Law

Comments: Many commenters stated that the Department does not explain the need for what they characterize as a broad exemption for religious student organizations on college campuses. Several commenters argued that no laws, including the Free Exercise Clause, require these final regulations. These commenters noted that, in *CLS* v. *Martinez,* the Court held that CLS, in seeking an exemption from Hastings' across-the-board all-comers policy, sought *preferential, not equal* treatment; the group therefore could not moor its request for accommodation to the Free Exercise Clause.[95] Commenters also stressed that the regulation is not required under Title IV of the HEA. Commenters argued that the proposed regulations violate the clear directive of Executive Order 13864, namely that agencies ''take appropriate steps, *in a manner consistent with applicable law*[.]'' [96]

One commenter maintained that the proposed regulations could conflict with State and/or Federal civil rights laws that require campus all-comers or non-discrimination policies. This commenter noted that Title IX and other Federal and State civil rights laws prohibit public institutions of higher education from discriminating on the basis of sex and other protected characteristics. According to this commenter, public universities also may choose to advance State-law goals through the school's educational endeavors. The commenter opined that in order to ensure full compliance with State and Federal civil rights laws, public colleges and universities often have in place robust non-discrimination policies that apply neutrally to all student organizations. Similarly, another commenter asserted that the proposed regulations offer some public institutions a choice between aligning with State and local non-discrimination laws and maintaining eligibility for Federal grant funding. This commenter contended that colleges and universities that choose to maintain eligibility for Departmental grants by revising their protocols to allow for recognition of faith-based student organizations without all-comers policies would, in some jurisdictions, expose themselves to a legal challenge grounded in State and local nondiscrimination laws.

One commenter also opined that the proposed regulations include language that is worrisome in its vagueness, as it prohibits public institutions from denying rights to a religious student organization based on the group's ''practices, policies, . . . and leadership standards.'' [97] This commenter contended that this language is untethered to religious beliefs or religious speech. This commenter asserted that the Department should not want colleges and universities to abdicate their responsibility to set reasonable and appropriate standards for student organizations, and it certainly ought not to compel that abdication. This commenter gave the example that no college or university should be encouraged or compelled to turn a blind eye to hazing because it is occurring within a religious student organization.

Another commenter expressed concerns that the proposed regulations may create a scenario in which a public institution of higher education could lose Federal funding for denying recognition to a student organization that promotes hate speech barred by school policies, while a private institution receiving funding under the identical program could censor speech otherwise protected by the First Amendment but which violates the school's internal speech policies. The commenter argued that such an outcome defies reason and would likely not survive constitutional scrutiny.

Discussion: The Department disagrees with commenters who state that the Department does not explain the need for the rule. The NRPM noted that courts repeatedly have been called upon to vindicate the rights of dissident campus speakers who do not share the views of the majority of campus faculty, administrators, or students. It also provided numerous examples of cases in which Federal courts found that public universities discriminated against religious student organizations in violation of the First Amendment by withholding funding or denying other rights, benefits, and privileges afforded to secular student organizations.

Sections 75.500(d) and 76.500(d) are wholly consistent with applicable law, including but not limited to Supreme Court precedent, the First Amendment, Title IX, and the HEA. First, regarding Supreme Court precedent, the Department clarifies that §§ 75.500(d) and 76.500(d) do not, as several commenters stated, prevent institutions from implementing all-comers policies which were upheld in *Martinez,* nor does it constitute an ''exemption'' for religious student groups from all-comers policies. Instead, these final regulations reinforce the First Amendment's mandate that public institutions treat religious student organizations the same as other student organizations. As such, a university does not have to choose between compliance with State law and securing Federal funding in the form of grants; it is free to enforce an all-comers policy, which is permissible under *Martinez,* in order to comply with any State anti-discrimination laws as long as it applies that policy equally to all student organizations as stipulated in *Martinez.* If a public institution chooses not to adopt an all-comers policy, which is also permissible, then the institution cannot require a student organization, including a religious student organization, to open eligibility for membership and leadership to all students. Ultimately, a university has the discretion to choose what kind of policy will best comply with its own State and local anti-discrimination laws.

Additionally, these final regulations are consistent with the U.S. Constitution and governing case law.[98] ''The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' '' [99] The Supreme Court has ''repeatedly confirmed'' that ''denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order.'' [100] Most recently in *Espinoza,* the Supreme Court confirmed again: ''This rule against express religious discrimination is no doctrinal innovation. Far from it. As

[95] *Martinez,* 561 U.S. at 697 n.27.

[96] 84 FR 11402.

[97] This commenter quotes from §§ 75.500(d) and 76.500(d), as proposed in the NRPM.

[98] These final regulations also are consistent with and in furtherance of the Religious Freedom Restoration Act (RFRA). 20 U.S.C. 2000bb, *et seq.; Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct., at 2383–84 (U.S. July 8, 2020). RFRA ''provide[s] very broad protection for religious liberty.'' *Burwell* v. *Hobby Lobby,* 573 U.S. 682, 693 (2014). RFRA applies to the Department, and some of the Department's grantees may essentially act on behalf of the Department in awarding subgrants or administering formula-grant programs. These final regulations as material conditions of a Department's grant under §§ 75.500(d) and 76.500(d) will help ensure that any entity, acting on behalf of the Department with respect to a grant, does not substantially burden a person's free exercise of religion.

[99] *Trinity Lutheran,* 137 S. Ct. at 2019 (quoting *Lukumi,* 508 U.S. at 533).

[100] *Id.*

Trinity Lutheran explained, the rule is 'unremarkable in light of our prior decisions.' '' [101] Sections 75.500(d) and 76.500(d) are designed to bolster these protections and prevent public institutions from denying rights, benefits, and privileges to religious student organizations because of their religious character. The First Amendment protects religious student organizations' right to free exercise of religion in addition to the freedoms of speech and association, and these final regulations are consistent with the First Amendment, including the Free Exercise Clause, which requires equal treatment of secular and religious student organizations. Given the abundant evidence noted by commenters regarding schools ''denying generally available benefits'' to religious groups ''solely on account of religious identity,'' these regulations are necessary to make the guarantees in the First Amendment, including the Free Exercise Clause, a reality at public institutions.[102] Similarly, a public institution does not violate Title IX by allowing religious student organizations to have faith-based criteria for their leaders or to otherwise engage in the free exercise of their religion. These final regulations reinforce freedoms guaranteed by the First Amendment. Additionally, the Title IX Final Rule, which became effective on August 14, 2020, expressly states that none of the regulations implementing Title IX requires a recipient of Federal financial assistance to ''[r]estrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.'' [103]

With respect to the HEA, the Department acknowledges that these final regulations are not a condition of participation in programs under Title IV of the HEA. These final regulations are consistent with the HEA, which expressly states that ''an institution of higher education should facilitate the free and open exchange of ideas'' [104] and ''students should be treated equally and fairly.'' [105] Further and as explained more fully in the ''Executive Orders and Other Requirements'' section, the Department is authorized under 20 U.S.C. 1221e–3, 20 U.S.C. 3474, and E.O. 13864 to promulgate these final regulations.

Lastly, the Department acknowledges that under these final regulations, a public institution may lose Federal funding for violating the First Amendment—by, for example, prohibiting hate speech,[106] if such hate speech constitutes protected speech under the First Amendment, while a private institution may not lose its funding for engaging in the same conduct. But this distinction between public and private institutions is not unique to these final regulations. It is a well-established principle that private institutions are not bound by the First Amendment.[107] Such an outcome is contemplated by the very text of the First Amendment, which prohibits ''Congress'' from violating fundamental freedoms and which was later made applicable to the States through the Fourteenth Amendment.[108] Despite this constitutionally mandated distinction, the Department emphasizes that private institutions are still bound by their own ''stated institutional policies regarding freedom of speech, including academic freedom'' under §§ 75.500(c) and 76.500(c) of these final regulations.

Additionally, these final regulations would not interfere with an institution's ability to enforce an anti-hazing policy, because such a policy would be a neutral, generally applicable rule applied to all student groups. These final regulations are instead intended to address policies that single out religious groups for disparate treatment. To clarify that religious student organizations may not be treated differently on account of their religion, the Department revises §§ 75.500(d) and 76.500(d) to state that public institutions shall not deny to any student organization *whose stated mission is religious in nature* any right, benefit, or privilege that is otherwise afforded to other students organizations at the public institution because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, *which are informed by sincerely held religious beliefs.* These revisions clarify which student organizations may be considered religious by noting that the student organization's own stated mission is religious in nature. These revisions also clarify that beliefs, practices, policies, membership standards, or leadership standards, which are informed by sincerely held religious beliefs, must not constitute the basis for differential treatment from other student organizations, which is consistent with the First Amendment.

Changes: The Department revised §§ 75.500(d) and 76.500(d) to clarify that religious student organizations include any student organization whose stated mission is religious in nature. The Department further revised these regulations to clarify that a public institution cannot deny any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Whether Public Institutions Discriminate Against Religious Organizations

Comments: Numerous commenters shared specific instances in which faith-based student organizations *were* discriminated against because of their religious status. As noted in more detail in the ''Comments in Support'' subsection of the ''34 CFR 75.500(d) and 34 CFR 76.500(d)—Religious Student Organizations'' section, many different commenters reported, for example, that universities refused to recognize or outright banned religious organizations that used faith-based qualifications to select leadership. As a result, these organizations, if they were even allowed on campus at all, were stripped of university benefits such as funding or facilities, faced bureaucratic hurdles that were not applied to secular organizations, and in one case, could not even approach students on campus because of the university's biased solicitation policy. Commenters noted that even when these institutions reversed their policies, religious student organizations were still subject to administrative delays of up to a year in some cases, faced prejudice and misconceptions, and experienced increased polarization, which discouraged debate.

Conversely, some commenters maintained that religious student

[101] *Espinoza,* 140 S. Ct. at 2260 (quoting *Trinity Lutheran,* 137 S. Ct. at 2021) (internal quotation marks and citation omitted).

[102] *Lukumi,* 508 U.S. at 532 (''At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.'').

[103] 85 FR 30573 (the Title IX final regulations provide this express statement at 34 CFR 106.6(d)(1)).

[104] 20 U.S.C. 1011a(a)(2)(C).

[105] 20 U.S.C. 1011a(a)(2)(E). Congress also stated in 20 U.S.C. 1011a(a)(2)(F) that ''nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.''

[106] *Matal* v. *Tam,* 137 S. Ct. 1744, 1765 (2017) (''it is a fundamental principle of the First Amendment that the government may not punish or suppress speech based on disapproval of the ideas or perspectives the speech conveys.'').

[107] *Manhattan Cmty. Access Corp.* v. *Halleck,* 139 S. Ct. 1921, 1926 (2019) (''The Free Speech Clause of the First Amendment constrains governmental actors'').

[108] *First Nat'l Bank of Bos.* v. *Bellotti,* 435 U.S. 765, 778 (1978).

organizations are already treated equally under the current rules, and the Department failed to include even anecdotal evidence that religious student organizations who wish to restrict their membership or leadership have been treated differently from other types of private groups. A commenter argued that this ''fix'' is the very definition of a solution in search of a problem. A commenter also stated that unofficial student groups often have access to the school's facilities to conduct meetings and the use of chalkboards and generally available bulletin boards to advertise events. According to this commenter, even the Supreme Court, in *CLS* v. *Martinez,* found that the CLS chapter was being treated the same as other private groups on campus, including fraternities, sororities, social clubs and secret societies, which maintained a presence at the university without official status.[109]

Discussion: The Department notes the numerous comments recounting instances of discrimination against religious student organizations, in which they were deprived of recognition, funding, or facilities, among other benefits, due to their religious status or character. The Department is revising §§ 75.500(d) and 76.500(d) specifically to remedy these issues of disparate treatment.

We disagree with the commenters who suggest that religious student organizations are always treated equally with respect to secular organizations under the current regulations, and that the Department included no evidence to the contrary. For example, the NPRM cited to *Rosenberger* v. *Rector & Visitors of the University of Virginia,*[110] in which the Supreme Court held that a public institution denying funding to a religious student newspaper but not other secular student newspapers amounted to unlawful viewpoint discrimination under the First Amendment. In addition, the NPRM cited *Business Leaders in Christ* v. *University of Iowa,*[111] in which the Federal district court very recently held that treating a religious student organization differently than other student organizations violated the religious student organization's First Amendment rights to free speech, expressive association, and free exercise of religion. Further, the Department received a tremendous number of comments replete with examples of the differential treatment that faith-based organizations suffer compared to secular student organizations, only some of which are described above. These anecdotes concerned religious student organizations at hundreds of schools across the country; came from national nonprofit organizations, professors, faculty advisors, students, and lawyers; and described experiences that occurred over decades.

The Department acknowledges that there may be instances when unofficial student groups are granted access to *some* of an institution's facilities or resources, as was the case in *Martinez.*[112] Nevertheless, such access to limited benefits does not cure the constitutional infirmities under the First Amendment when religious student organizations are denied benefits afforded to other student organizations or unequally burdened as compared to other student organizations. And often religious student organizations are denied access to any of an institution's facilities or resources, which, as one commenter expressed, relegates them to second-class status. Singling out religious student organizations for disfavored treatment because of their religious nature or religious viewpoints is precisely what the Supreme Court held impermissible in *Rosenberger* v. *Rector & Visitors of University of Virginia* [113] and *Widmar* v. *Vincent.*[114] Thus, these final regulations are consistent with Supreme Court case law. As explained in more detail in the '' 'All-Comers' Policies for Student Organizations'' section, these final regulations are consistent with the holding in *Martinez,* which permitted but did not require public institutions to adopt all-comers policies.[115]

Changes: None.

Proposed Modifications & Requests for Clarification

Comments: One commenter expressed the need for private colleges to be included under the regulations for public institutions because of concerns regarding a policy at one private institution requiring student groups to open leadership to any student or lose school recognition. This commenter noted that a loss of recognition results in a loss of access to student activity fee money, low-cost or free university spaces, and recruiting tools.

Discussion: This commenter describes what is known as an all-comers policy which, while uncommon in practice, was upheld by the Supreme Court of the United States in *CLS* v. *Martinez.*[116] It is permissible for an institution to implement such a policy under the Department's final regulations, since it is a neutral rule of general applicability. However, absent such an all-comers policy, §§ 75.500(d) and 76.500(d) prevents *public* institutions from failing to recognize religious student organizations because of their faith-based membership or leadership criteria.

The Department further responds that §§ 75.500(d) and 76.500(d)—which are rooted in the First Amendment—do not apply to private institutions because private institutions are not bound by the First Amendment.[117] Private institutions are, however, obligated to uphold their ''stated institutional policies regarding freedom of speech, including academic freedom,'' through §§ 75.500(c) and 76.500(c) of these final regulations. Institutions that violate their own stated institutional policies regarding freedom of speech, including academic freedom, will be found in violation of the material conditions in §§ 75.500(c) and 76.500(c) if there is a final, non-default judgment by a State or Federal court to the effect that the private institution violated such stated institutional policies.[118]

Changes: None.

Comments: One commenter noted that §§ 75.500(d) and 76.500(d) provide no indication of how the Department will determine that a public college or university has violated the regulation's requirement to treat religious organizations and secular organizations the same. The commenter guessed that, absent indications to the contrary, the Department will make this determination entirely by itself. The commenter opined that this type of inquiry is inappropriate for the Department to engage in and one it is ill-equipped to make.

Discussion: The Department has the resources and expertise to determine the narrow issue as to whether a public university has violated the regulation's requirement to not deny a religious student organization any of the rights, benefits, and privileges afforded to other student organizations. Whether religious student organizations are denied the rights, benefits, and privileges as other student organizations is a discrete issue

[109] *Martinez,* 561 U.S. at 691.

[110] 515 U.S. 819, 845, 829–30 (1995).

[111] 360 F. Supp. 3d 885, 899 (S.D. Iowa 2019).

[112] *Martinez,* 561 U.S. at 673 (finding school withheld official recognition from Christian Legal Society but allowed it the use of facilities, chalkboards, and generally available campus bulletin boards).

[113] 515 U.S. 819, 845 (1995).

[114] 454 U.S. 263, 277 (1981).

[115] 561 U.S. at 698.

[116] 561 U.S. 661 (2010).

[117] *Manhattan Cmty. Access Corp.,* 139 S. Ct. at 1926.

[118] 34 CFR 75.500(c)(1); 34 CFR 76.500(c)(1).

that the Department may easily investigate. This issue does not involve the full panoply of First Amendment issues that the other regulations in §§ 75.500(b)–(c) and 76.500(b)–(c) present. The Department would only determine whether other student organizations indeed received the right, benefit, or privilege that the religious student organization was allegedly denied because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs. The Department routinely investigates violations of its regulations, and attorneys within the Department's Office of General Counsel regularly advise the relevant office within the Department on any legal issues that arise in an investigation. Unlike investigations of any potential violation of any provision of the First Amendment or any stated institutional policy regarding freedom of speech, including academic freedom, an investigation of the treatment of religious student organizations as compared to other student organizations is limited in scope and presents a discrete issue. An investigation to determine whether religious student organizations are being treated differently than other student organizations is similar to the types of investigations that the Department currently conducts. The Department has developed expertise in investigating, for example, the discrimination or different treatment on the basis of sex under Title IX or on the basis of race, color, and national origin under Title VI. Additionally, §§ 75.500(d) and 76.500(d) expressly indicate ways in which a public institution may treat a religious organization differently from a secular organization, such as by failing to provide full access to the facilities of the public institution, withholding funds from a religious organization, or denying official recognition to a religious organization.

Changes: None.

34 CFR 75.700 and 34 CFR 76.700—Compliance With the U.S. Constitution, Statutes, Regulations, Stated Institutional Policies, and Applications

Comments: One commenter asserted that under §§ 75.700 and 76.700, grantees must comply with *all* relevant statutes, regulations, and approved applications. However, the Department would limit compliance requirements to only specific sections of four statutes and related regulations. The commenter noted the Department's stated rationale that this modification would provide greater specificity and clarity, however, given the broad range of relevant statutes, regulations, and individual grant program requirements, the commenter believed there is no rational justification to modify these requirements. The commenter did not provide further explanation or clarification for this position.

Discussion: The Department wishes to clarify that the current language of §§ 75.700 and 76.700 already requires grantees and subgrantees to comply with all applicable laws, regulations, and approved applications. Statutory and regulatory requirements to which grant recipients must comply already include the prohibition on race discrimination under Title VI, the prohibition on sex discrimination under Title IX, the prohibition on discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973, and the prohibition on age discrimination under the Age Discrimination Act. Section 75.700, as proposed and as promulgated in these final regulations, would clarify that grantees participating in Direct Grant Programs must comply with all of the statutes and provisions in § 75.500, including § 75.500(b) and § 75.500(d) if they are public institutions and § 75.500(c) if they are private institutions. Similarly, § 76.700 would clarify that States and subgrantees participating in State-Administered Formula Grant Programs must comply with all of the statutes and provisions in § 76.500, including § 76.500(b) and § 76.500(d) if they are public institutions and must comply with § 76.500(c) if they are private institutions.

Changes: None.

34 CFR 106.12 Educational Institutions Controlled by Religious Organizations

During the public comment period, the Department received comments both in support of and in opposition to the proposed regulations about the religious exemption under Title IX. Below, we discuss substantive issues under topical headings, and by the sections of the final regulations to which they pertain.

General Support for Proposed Changes to 34 CFR 106.12

Comments: Some commenters expressed strong support for the proposed changes to § 106.12. One commenter, for instance, believed that the proposed changes were necessary to ensure the continued protection of religious liberty for religious educational institutions, contending that the proposed regulations, if finalized, would make clear that Title IX provides institutions with an affirmative defense against accusations of discrimination. Commenters also noted that Title IX does not require permission or recognition from the government before an institution asserts its eligibility for a religious exemption as a defense for a religious belief or the practice dictated by that belief.

Similarly, one commenter supported the Department's acknowledgement of the various ways that an institution may establish its eligibility for a religious exemption under Title IX, and noted that, in prior administrations, responses to letters claiming the religious exemption were significantly delayed. According to the commenter, this caused religious institutions to worry that the Department's Office for Civil Rights (OCR) was considering whether to deem the schools ineligible for the exemption, despite their thoroughly religious character.

One commenter believed that the ''application'' for an assurance that a school could invoke or maintain a religious exemption had previously been misconstrued by the Department, to the detriment of religious schools and universities, and to the detriment of the values protected by the United States Constitution. The commenter contended that there is no ''application process'' set forth in the Title IX statute for a religious exemption. The commenter further contended that the Department has no power or authority to review and rule upon a school's religious tenets, or whether a school is justified on the basis of those tenets to invoke an exemption. The commenter stated that not only does the Title IX statute not require such review before a school may invoke a religious exemption, but that the First Amendment would not permit such review.

Discussion: The Department appreciates and agrees with the comments that religious liberty must be preserved and protected.[119] In promulgating this regulation, the Department took into account the RFRA [120] and the United States Attorney General's October 6, 2017 Memorandum

[119] *See Bostock* v. *Clayton County, Georgia,* 140 S. Ct. 1731, 1754 (2020) (stating, in the Title VII religious exemption context, ''We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.'').

[120] 42 U.S.C. 2000bb–2(4) (referring to 42 U.S.C. 2000cc–5(7)(A) (defining ''religious exercise'' as ''any exercise of religion, whether or not compelled by, or central to, a system of religious belief'')). *See also Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367 (2020); *Burwell* v. *Hobby Lobby,* 573 U.S. 682 (2014).

on Federal Law Protections for Religious Liberty.[121] Further, the Department believes that its view of the religious exemption provisions within Title IX avoids unconstitutional discrimination against faith-based entities that would otherwise occur if OCR required that educational institutions fit one specific organizational structure before they can become eligible for a religious exemption.

The Department agrees with the commenter who stated that there is no ''application process'' set forth in the Title IX statute. No part of the statute requires that recipients receive an assurance letter from OCR, and no part of the statute suggests that a recipient must be publicly on the record as a religious institution that claims a religious exemption before it may invoke a religious exemption in the context of Title IX. While the implementing regulations at 34 CFR 106.12 set forth a process for recipients to ''claim'' the exemption by submitting a letter, in writing, to the Assistant Secretary, the Department has eliminated that requirement in the Title IX Final Rule, effective on August 14, 2020, which permits but does not require recipients to submit a letter claiming a religious exemption from Title IX.[122]

The Department further acknowledges that the final regulation promulgated through this rulemaking with respect to § 106.12 provides a non-exhaustive list of criteria that offer educational institutions different methods to demonstrate that they are eligible to claim an exemption to the application of Title IX, 20 U.S.C. 1681, and its implementing regulations, to the extent Title IX and its implementing regulations would not be consistent with the institutions' religious tenets or practices. Title IX, 20 U.S.C. 1681(a)(3), does not directly address how educational institutions demonstrate whether they are controlled by a religious organization. The criteria in 34 CFR 106.12(c) codify existing factors that the Assistant Secretary for Civil Rights uses when evaluating, on a case-by-case basis, a request for a religious exemption assurance from OCR, and also addresses concerns that there may be other means for establishing the necessary control.

While several commenters argued that the best course for OCR is to require educational institutions to seek an assurance letter describing their religious exemption before a complaint is filed against them, the Department notes that the reasons for the changes to 34 CFR 106.12(b) were addressed in the November 29, 2018 Title IX NPRM,[123] and the recently released Title IX Final Rule, effective August 14, 2020.[124] As explained in the Title IX NPRM and Final Rule, the current version of 34 CFR 106.12(b) could suggest that recipients are required to write a letter to the Assistant Secretary for Civil Rights, and argue that parts of the regulation conflict with a specific tenet of the religious institution. The Department has determined that such a requirement is unnecessary in order to assert certain exemptions, and the Title IX final regulation seeks to codify the Title IX statute's broad statement that ''this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.'' The NPRM for these regulations did not propose any changes to 34 CFR 106.12(b). However, some commenters expressed strong agreement with the Department's proposed changes to § 106.12(b) in the November 29, 2018 Title IX NPRM addressing sexual harassment and other topics, especially when coupled with the proposed changes outlined in this January 17, 2020 NPRM for these final regulations. The Department has determined that, in the aggregate, these changes better align the Title IX regulations with the Title IX statute, the First Amendment, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb, *et seq.* The Department understands the often complex relationships between recipients and controlling religious organizations.

The Department acknowledges that its practices in the recent past regarding assertion of a religious exemption, including delays in responding to inquiries about the religious exemption, may have caused educational institutions to become reluctant to exercise their rights under the Free Exercise Clause of the First Amendment. The Department would like to make sure its regulations are consistent with educational institutions' ability to fully and freely enjoy rights guaranteed under the Free Exercise Clause of the U.S. Constitution and Federal statutes. Accordingly, the Department chose to engage in notice-and-comment rulemaking to clarify the religious exemption under Title IX.

Changes: None.

General Opposition to Proposed Changes to 34 CFR 106.12

Comments: Many commenters expressed opposition to the proposed changes to § 106.12 because they believed that the changes would allow schools to claim sweeping, almost unlimited religious exemptions to Title IX. These commenters asserted that the proposed rule would make it easier for a broader range of schools to claim a religious exemption, which the commenters often described as a right to discriminate while nevertheless still receiving Federal monies. Some of these commenters stated that the Department should find a Title IX violation in every case of sex discrimination, and protect all students in all schools receiving Federal funds, instead of allowing schools to find ways to shield themselves from liability for discriminatory practices.

Commenters also expressed general opposition to the proposed changes to § 106.12 by way of sharing their personal experiences of being educators, female students, LGBTQ students, parents of LGBTQ students, victims of sexual assault, and students at religious schools. These commenters stated that students who go to religious schools should be equally protected against sex discrimination as all other students, even if the discrimination stems from a religious practice. Commenters argued that sex-based discrimination can result in students like them being disciplined, mistreated, or forced out of school. These commenters asserted that as a result of the proposed changes to § 106.12, female students who were either pregnant or parenting, LGBTQ students, and religious minority students could face enormous costs, such as having to interrupt or end their degree program due to expulsion, losing their tuition payments made up until that point, and missing out on subsequent professional opportunities. Some of these commenters further suggested that religious schools are sometimes the only or best higher education option for these students, even for people who do not identify with the tenets of the religion of the school.

Commenters also expressed specific concerns about potential situations that could result from the proposed changes to § 106.12, including a student who is sexually assaulted on an abstinence-only campus being expelled due to engaging in sexual activity; a school

[121] Available at *https://www.federalregister.gov/documents/2017/10/26/2017-23269/federal-law-protections-for-religious-liberty*.

[122] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 FR 30026, 30573 (May 19, 2020).

[123] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 FR 61462 (Nov. 29, 2018).

[124] *See* 85 FR 30573.

being unable to stop another student from forming a club based on hatred of women or LGBTQ students based on purported religious principles, or a school being required to equally offer school resources to such a group on equal terms as other student groups. Other examples posed by the commenters included a student raped on a ''dry'' campus after drinking being expelled after reporting the rape, due to consumption of alcohol in violation of school policies. Alternatively, a school might expel the same student, asserted commenters, for not reporting the rape, and allowing the rapist to continue to pose a threat on campus, even if the failure to report was out of fear of retaliation for drinking. According to commenters, this posed a dilemma for students, who might be disciplined whether or not they reported sexual assault. Commenters described scenarios where schools could not stop a student group or faculty member from bringing a speaker to campus who is known for hate speech and inciting violence; or a gay student at a religious institution who is being harassed, and discloses his sexual orientation as part of his report of the harassment, and who is subsequently expelled by his school, purportedly for his own safety.

One commenter believed that the proposed changes to § 106.12 would condone schools that receive Federal funding looking the other way toward sex discrimination, and would in fact replicate the predatory and violent types of behavior against students that these schools should be working to prevent and respond to. The commenter also asserted that the Department should not allow schools to discriminate against students who are victims and survivors of sexual violence.

Another commenter asserted that expanding or providing religious exemptions under Title IX will allow religious beliefs and religiously-motivated acts to be weaponized against students and families. The commenter believed that schools using religious exemptions will use them to harm and damage the students that they want to target, and religious people and schools will be able to do whatever they want without common sense and oversight. The commenter also questioned whether religious exemptions are automatically reviewed by the Department's Office of the General Counsel or its OCR on an annual basis, or for reasonableness, so that religious exemptions that conflict with recent developments in the law or case law are revoked.

Some commenters expressed agreement with the basic principle that religious freedom is an important part of the First Amendment, but also expressed opposition to the proposed rule. Other commenters asserted that, as a legal matter, schools receiving money from the Federal government are not allowed to discriminate because of the separation of church and State as required by the Constitution.

One commenter expressed concern that the proposed changes to § 106.12 would create a separate, federally funded system of religious schools that are allowed to define who makes up their student body in narrow, discriminatory ways that undermine the ethics and intent of publicly-funded schools.

Discussion: As the Department stated in the NPRM for this rulemaking, the purpose of these proposed amendments is to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as Title IX and RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty.[125] The regulations in 34 CFR part 106 address discrimination on the basis of sex in education programs or activities receiving Federal financial assistance, and the Secretary has authority to regulate with regard to discrimination on the basis of sex in such programs under 20 U.S.C. 1682. The proposed changes to § 106.12(c) of the Title IX regulations will eliminate the need for schools and other stakeholders to consult non-binding guidance to help discern whether an institution is controlled by a religious organization for a religious exemption under Title IX and provides a non-exhaustive list of criteria that is sufficient to establish that an institution is controlled by a religious organization.

The Department understands that some commenters opposed the proposed regulation because they feel that institutions should never be permitted to discriminate on the basis of sex in education programs or activities receiving Federal financial assistance. Many of these commenters characterized the religious exemption under Title IX as the right to discriminate on the basis of sex, which these individuals felt violated the principle of separation of church and State.

In response to these comments, the Department notes that the Title IX statute expressly provides for multiple exceptions to the application of Title IX to certain entities, including 20 U.S.C. 1681(a)(3) (titled, ''Educational institutions of religious organizations with contrary religious tenets''). While the Establishment Clause is an important part of the Constitution, implementing the religious exemption language expressly contemplated by the Title IX statute does not violate the Constitution or its Establishment Clause. Where, as here, a statute expressly provides for a religious exemption from statutory provisions, the recipient of Federal funds' free exercise of religion, which also is guaranteed under the Constitution, may be infringed by failing to recognize that exemption under the statute.

The Department acknowledges that some commenters felt that proposed § 106.12(c) would allow recipients to shield themselves from losing Federal funds over their discriminatory practices. In response, the Department again reiterates that the Title IX statute, at 20 U.S.C. 1681(a)(3), created an express exemption from the requirements of Title IX for ''educational institutions of religious organizations with contrary religious tenets.'' While our revised § 106.12(c) seeks to clarify eligibility for claiming a religious exemption, the Department will evaluate and respond to all complaints filed with OCR that allege discrimination under Title IX, including allegations that the religious exemption in 20 U.S.C. 1681(a)(3) does not apply to an institution.

The Department understands that some commenters were concerned that religious schools are sometimes the best or only higher education option for students, even for students who do not identify with the tenets of the religion of the school. While the Department is sympathetic to this point, a recipient that meets the criteria for a religious exemption is entitled to the protections that the statute affords it.

The Department recognizes that several commenters remarked upon the ''broad'' language utilized in multiple subsections of proposed § 106.12(c). While the Department does not agree with the assessment by one commenter that the Department is opening the floodgates to ''almost unlimited'' religious exemptions under Title IX, the Department appreciates the thoughtful comments about the ''moral beliefs or practices'' language used in proposed § 106.12(c)(5),[126] and acknowledges that

[125] 85 FR 3190–01.

[126] *See* proposed 34 CFR 106.12(c)(5) (''A statement that the educational institution subscribes to specific moral beliefs or practices, and a statement that members of the institution

Continued

the language could be interpreted in an overly broad manner. In response to these and other concerns raised about the ''moral beliefs or practices'' language, the Department has removed the entirety of proposed § 106.12(c)(5) in the final regulation. This change is discussed in more detail in the ''Proposed 34 CFR 106.12(c)(5)'s reference to moral beliefs'' section of this preamble.

As discussed in more detail in the ''Proposed 34 CFR 106.12(c)(7)'' section of this preamble, the Department also received comments that expressed concern about the ''other evidence'' language used in proposed § 106.12(c)(7). Specifically, some commenters expressed that an educational institution could attempt to meet the criteria of § 106.12(c)(7) with very minimal evidence that they are controlled by a religious institution. In the final regulation, the Department added qualifiers to § 106.12(c)(7) to make clear that ''other evidence'' must be *sufficient* to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3). In doing so, the Department clarifies that there has to be sufficient ''other evidence'' to establish control.

The Department notes, in response to commenters who allege that this provision exceeds the scope of the statute by requiring almost no evidence of control by a religious organization, that the ''other evidence'' must itself establish control by a religious organization, and not merely a tenuous tie to a religious organization. This provision does not expand the permissible scope of the statute to mean that literally any evidence—regardless of the amount of evidence, its relevance, or its persuasiveness—is sufficient to establish a religious exemption.

With respect to arguments that raised concerns about the proposed regulation permitting students to form hate groups on campus, or concerns that schools would be unable to control which speakers are brought to campus, the final regulations do no such thing. A school's ability to assert a religious exemption from Title IX does not affect a school's rights to permit student groups or speakers from forming or speaking on campus. The issues of invited speakers, freedom of association, and campus speech, generally, are complex issues that are evaluated in light of the First Amendment and associated case law.[127] Section 106.12(c) does not address those complex issues, and it should not be construed as affecting the recipient's rights to address First Amendment issues on their campuses.

The Department thanks the many commenters who shared their personal experiences in attending institutions controlled by religious organizations. Some of these commenters expressed general opposition to the proposed rule because of their fear of the possible consequences to certain groups of individuals attending such institutions, including LGBTQ students, pregnant and parenting students, students who have experienced sexual violence while intoxicated, students who have engaged in sexual activity that is against their religion's teachings, and religious minority students. In particular, one commenter suggested that the Department should not permit educational institutions to discriminate against students who have experienced sexual violence. The Department reiterates that a religious exemption under Title IX is not a wholesale exemption from all provisions pertaining to sex-based discrimination, and that any assertion of an exemption must be based on the religious tenets of a religious organization that controls the educational institution. In this regard, the Department is skeptical that schools will be eligible to assert exemptions from the requirement to respond appropriately to sexual harassment under Title IX or from the prohibition on retaliation against individuals who invoke their rights under Title IX.

One commenter specifically asked if the Department (either OCR or the Office of the General Counsel) would automatically review religious exemptions for reasonableness, on an annual basis. In response, the Department states that it will review assertions of religious exemptions, like all Title IX matters, pursuant to its enforcement authority under Title IX. However, the Department has never, and will not begin now, ''automatically reviewing'' all religious exemptions under Title IX, on an annual basis. If a complaint is filed, and the complaint alleges that a recipient improperly applied a religious exemption or any other exemption under Title IX, OCR will carefully consider the complaint, evaluate compliance with the statute and regulations, and respond accordingly. Finally, the Department notes that anyone who believes that a recipient institution has engaged in sex discrimination in violation of Title IX may file a complaint with OCR. Details about filing a complaint are available on OCR's website at *www.ed.gov/ocr/complaintintro.html.* Additional resources on Title IX are available on OCR's website at *www.ed.gov/ocr/frontpage/pro-students/sex-pr.html.*

Changes: In the final regulation, the Department is removing proposed § 106.12(c)(5) from the non-exhaustive list of criteria for establishing a religious exemption.

In addition, the Department is adding two qualifiers to proposed § 106.12(c)(7), which is § 106.12(c)(6) in the final regulations, to make clear that the other evidence used to meet this final criterion must be *sufficient* to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3).

Proposed Changes to 34 CFR 106.12 and Relationship to Title IX Generally

Comments: Some commenters asserted that the proposed changes to § 106.12 ignore the purpose of Title IX. These commenters further argued that the proposed changes undermine the mission of OCR by letting institutions allow discrimination by student groups and staff, even when doing so means that the institution would not meet the general duties it would have under Title IX. Some commenters even suggested that OCR was forcing institutions to invoke exemptions from Title IX, in the sense that religious institutions might be forced to invoke a religious exemption, even if they wanted to comply with the general non-discrimination duties of Title IX.

One commenter noted the impact of what happens when students' Title IX rights are ignored. The commenter believed that the proposed changes to § 106.12 would put all students at risk because when one student is affected, it also affects their peers who may witness harassment, be subjected to increased harassment themselves, and may become anxious and unable to concentrate in school. Another commenter was concerned that the proposed changes would require public institutions to fund religious student organizations, even when they discriminate against students protected under Title IX. The commenter believed this contradicts the Supreme Court's opinion in *Christian Legal Society* v. *Martinez,*[128] and would force public

community may be subjected to discipline for violating those beliefs or practices.'').

[127] *See, e.g., Roberts* v. *U.S. Jaycees,* 468 U.S. 609 (1984) (freedom of association); *Bd. of Regents of Univ. of Wis. Sys.* v. *Southworth,* 529 U.S. 217, 233 (2000) (free speech and free association on a college campus); *Rosenberger* v. *Rector and Visitors of Univ. of, Va.,* 515 U.S. 819 (1995) (viewpoint neutrality and the First Amendment).

[128] 561 U.S. 661 (2010).

institutions to fund discrimination prohibited by Title IX.

Some commenters expressed general opposition to the proposed changes to § 106.12 and asserted that the Department did not explain how the proposed changes are consistent with the Title IX statute. A commenter asserted that the Department did not explain why the proposed changes are needed to assist qualifying institutions. Finally, a commenter asserted that the Department did not explain why any alleged benefits of the proposed changes are greater than the discriminatory harm faced by students and employees at educational institutions.

Discussion: The religious exemption provision of Title IX, 20 U.S.C. 1681(a)(3), does not directly address how educational institutions demonstrate whether they are controlled by a religious organization. As the comments in response to the proposed rule demonstrate, some commenters have taken this lack of clarity to mean that an educational institution can never be controlled by a religious organization, unless the religious organization takes the form of a separate corporate or other legal entity. The criteria in § 106.12(c) helpfully codify existing factors that the Assistant Secretary for Civil Rights uses when evaluating, on a case-by-case basis, requests for a religious exemption assurance from OCR, and while addressing concerns that there may be other means of establishing the necessary control.

Additionally, because many of these factors are contained in non-binding guidance issued to OCR personnel dating back more than 30 years, enacting clear regulatory provisions will provide recipients and other stakeholders with clarity regarding what it means to be ''controlled by a religious organization.'' Here, the Department has authority to regulate with regard to discrimination on the basis of sex under 20 U.S.C. 1682, and the Department has determined it is necessary to regulate given the statutory silence and genuine ambiguity in regard to the criteria for obtaining a religious exemption under Title IX. These regulations are consistent with the Title IX statute in that they do not contradict, but attempt to clarify, an explicit exception provided for in the Title IX statute.

Of course, no educational institution controlled by a religious organization is required to assert any religious exemption at all. Nor does § 106.12 alter the ability of individual students to pressure a school into asserting a religious exemption to Title IX or declining to assert such an exemption. Commenters' fears that § 106.12, as proposed, will permit students or student groups to obligate their schools to distribute monies or services in a different manner, based on a religious exemption to Title IX, are incorrect. To the extent that individual students may not be protected by non-discrimination obligations if they attend an educational institution controlled by a religious organization, such a consequence is a result of the Title IX statute itself, and not the regulations.

The Department acknowledges that some commenters felt that the Department did not sufficiently articulate why the proposed changes are needed to assist institutions controlled by religious organizations. As explained above, these proposed revisions conform more closely to the intent of Executive Order 13831 and to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General's Memorandum on Religious Liberty. The Department has determined that the codification of the factors utilized by OCR in analyzing a religious exemption from Title IX will promote transparency and remove barriers to recipients exercising their First Amendment rights. Further, enacting clear regulations will provide recipients and other stakeholders with clarity regarding what it means to be ''controlled by a religious organization.'' As some commenters argued, some educational institutions were concerned that they might not be eligible for a religious exemption because their religious and organizational structure did not include an external controlling organization. This provision's clarity—which also enshrines specific criteria for ''control'' into regulations with the force and effect of law, as opposed to non-binding guidance—will create more predictability, consistency in enforcement, and confidence for educational institutions asserting the exemption. The Department carefully considered comments about weighing the anticipated benefits of the proposed regulation against the potential discriminatory harm that may be experienced by students and employees. While the Department appreciates that many commenters were concerned about potential harm to vulnerable populations, the Department asserts that Congress enacted Title IX with explicit exceptions to the requirements of Title IX, and these final regulations do not create new exceptions to the Title IX statute. Instead, the Department is providing much-needed clarity to the meaning of vague terminology utilized in the statute.

Finally, the Department notes that it has addressed a commenter's concerns pertaining to public institutions funding student organizations that discriminate on the basis of sex, and the Supreme Court's decision in *Christian Legal Society* v. *Martinez,*[129] in the ''All-Comers' Policies for Student Organizations'' section of this preamble. In short, the Department clarifies that this regulation does not prevent institutions from implementing all-comers policies, which were upheld in *Martinez,* nor does it constitute an ''exemption'' for religious student groups from all-comers policies. Instead, these final regulations reinforce the First Amendment's mandate that public institutions treat religious student organizations the same as other student organizations. As such, a university does not have to choose between compliance with State law and securing Federal funding in the form of grants; it is free to enforce an all-comers policy in order to comply with any State anti-discrimination laws as long as it applies that policy equally to all student organizations. If a public institution chooses to not adopt an all-comers policy, which is also permissible under *Martinez,* then the institution cannot require a student organization, including a religious student organization, to open eligibility for membership and leadership to all students. Ultimately, a university has the discretion to choose what kind of policy will best comply with its own State and local anti-discrimination laws. In any event, whether a school meets the definition of an educational institution controlled by a religious organization in § 106.12, and further, whether it opts to invoke an exemption from Title IX, do not affect its rights under the First Amendment.

Changes: None.

Impact of Proposed Changes to 34 CFR 106.12 on LGBTQ Individuals

Comments: Many commenters expressed specific concerns that the proposed changes to § 106.12 would create barriers for and cause harm to LGBTQ students, parents, and school employees. Some commenters articulated specific concerns related to LGBTQ students, including direct financial costs like lost tuition for students who are forced to leave their schools; lost wages for employees who are fired for reasons that otherwise would violate Title IX; and, health-

[129] 561 U.S. 661 (2010).

related costs like the impact of stress on mental and physical health. One commenter noted that policies that extend equal rights and legal protections are associated with decreased stress levels and improved health outcomes among sex and gender minorities.

Some commenters asserted that the proposed changes to § 106.12 would harm LGBTQ students by referencing specific statistics regarding the experiences of LGBTQ youth in school, including statistics from GLSEN's 2017 National School Climate Survey (GLSEN Survey), to support their assertions. These commenters noted that the GLSEN Survey found that the vast majority of LGBTQ students experienced harassment or assault based on personal characteristics, including sexual orientation, gender expression, gender, religion, race and ethnicity, and disability; seven in ten LGBTQ students experienced verbal harassment based on sexual orientation; more than half of LGBTQ students experienced verbal harassment based on gender expression; more than a third of LGBTQ students missed at least a day of school in the last month because of feeling unsafe at school, and at least two in five students avoided bathrooms and locker rooms because they felt unsafe or uncomfortable; the frequency of verbal harassment based on gender expression increased from 2015 to 2017; and LGBTQ students who experienced high-levels of anti-LGBTQ victimization were nearly twice as likely to report that they do not plan to pursue postsecondary education; and these students had lower GPAs, lower self-esteem, and higher levels of depression.

Other commenters provided statistics related to LGBTQ youth without referencing a specific study, noting that LGBTQ youth are more likely to attempt suicide than heterosexual youth; that almost two-thirds of LGBTQ youth report being personally affected by anti-LGBTQ policies and practices; that 18 percent of LGBTQ students report leaving a school because they felt unsafe or uncomfortable; and that among LGBTQ students who make it to college, 31 percent have experienced a hostile campus environment.

Some commenters noted that a recent assessment of schools seeking religious exemptions found that the vast majority of requesting institutions sought exemptions from Title IX that were related to sexual orientation and gender identity. Commenters contended that these exemptions were invoked in order to facilitate sex discrimination by the institutions. According to these commenters, it is reasonable to expect the trend to continue under the proposed changes to § 106.12.

One commenter argued that employment discrimination based on sex, including sexual orientation and gender identity, remains a grave problem in the United States. The commenter asserted that although Federal law currently prohibits discrimination based on sex, the proposed changes to § 106.12 would embolden Federal contractors to cite religious beliefs in order to justify religious discrimination.

One commenter expressed concern that, as a practical matter, the proposed changes mean that a student who identifies as LGBTQ or who is a child of LGBTQ parents could be confronted with open anti-LGBTQ hostility by a Department-funded social service program partnering with public schools to provide healthcare screening, transportation, shelter, clothing, or new immigrant services. The commenter also believed that the proposed changes increase the likelihood that these harms will result by requiring the Department to issue special notices informing potential grantees that they can apply to be exempt from generally applicable civil rights laws.

Discussion: The Department acknowledges that the religious exemptions sought by some educational institutions have involved the application of Title IX to complex issues involving sexual orientation, gender identity, or transgender status. These educational institutions have often cited their religious texts and tenets when articulating conflicts with Title IX in correspondence with OCR. While the Department understands that some commenters believe that religious exemptions should not be granted when there is a conflict with Title IX stemming from a religious tenet addressing sexual orientation, gender identity, or transgender status, the Department enforces Title IX consistent with applicable statutes, including RFRA, and case law. Title IX does not require the Department to deny otherwise valid religious exemption requests if they relate to sexual orientation, gender identity, or transgender status.

Further, the Department disagrees that these proposed regulations will have a significantly increased negative impact upon LGBTQ individuals, because the final regulations clarify existing statutory exemptions to Title IX and the recipients' eligibility for claiming such exemptions. The religious exemption contained in Title IX has existed since the statute's enactment in 1972.[130] Since that time, the Department has issued a number of letters in response to educational institutions' correspondence asserting eligibility for a religious exemption, and the Department has stated publicly that it utilizes many of the criteria contained in this proposed regulation when considering such correspondence.[131] The Department cannot predict whether the number of recipients claiming the exemption will increase because (1) OCR's past practice has been to allow recipients to claim a religious exemption even after a complaint has been filed against the recipient, and thus, OCR has never had a concrete number of recipients who are claiming a religious exemption at a given time; and (2) after August 14, 2020 (the effective date of the Title IX Final Rule), it is clear that the recipient is under no obligation to affirmatively notify OCR that they are claiming a religious exemption. In any event, based on public comment, the Department does not believe that there are a significant number of educational institutions who have not previously sought a religious exemption, but would be eligible to do so as a result of these final regulations, which include existing factors from OCR's non-binding guidance.

With respect to commenters alleging that Federal contractors will now be able to discriminate on the basis of sex, the Department notes that this provision only applies to educational institutions that are controlled by a religious organization. The Department is committed to the rule of law and robust enforcement of Title IX's non-discrimination mandate. As a statutory exemption to certain provisions of Title IX exists for educational institutions controlled by a religious organization, the Department must acknowledge and practically administer such an exemption.

Changes: None.

Impact of Proposed Changes to 34 CFR 106.12 on Pregnant and Parenting Individuals

Comments: Many commenters expressed specific concerns that the proposed changes to § 106.12 would negatively impact pregnant and

[130] Title IX of the Education Amendments of 1972, Public Law 92–318, 373, 86 Stat. 235 (signed into law on June 23, 1972).

[131] *See, e.g.,* U.S. Dep't of Educ., Office for Civil Rights, Memorandum from William Smith, Acting Assistant Sec'y for Civil Rights, to OCR Senior Staff regarding Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions (Oct. 11, 1989), available at *https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo-19891011.pdf.*

parenting students. Some of these commenters also expressed specific concerns that the proposed changes would permit discrimination based on seeking reproductive health care, including those who have had an abortion or are unmarried and pregnant. One commenter asserted that the proposed rule would allow colleges and universities to discriminate against a significant portion of the population given that one in four women will have an abortion in their lifetime.

Discussion: The Department appreciates and has considered the comments raising concerns that the proposed changes may negatively impact pregnant and parenting students. However, the Department reiterates its disagreement with the contention that the proposed changes will have a significant increased impact on certain students, given that the process to assert eligibility for a religious exemption already exists, and the final rule does not significantly change the scope of educational institutions who are eligible to assert a religious exemption. The Title IX implementing regulations regarding the religious exemption were initially issued on May 9, 1980,[132] and the Department has issued a number of letters addressing religious exemptions on the basis of pregnancy and/or familial status since that time.[133]

In any event, if an educational institution controlled by a religious organization seeks a religious exemption from Title IX for the purposes of treating students differently on the basis of pregnancy or familial status, or having previously sought or obtained an abortion, and the criteria described in § 106.12 are met, the school would have stated a valid religious exemption under Title IX, regardless of the practical consequences of such a finding. These final regulations do not create a religious exemption where there was none.

Changes: None.

Opposition to Religious Exemptions Generally

Comments: Some commenters expressed opposition to the concept of religious exemptions in general. One commenter stated that when a person signs up to a certain profession and to conduct business, like an institution of higher education, they accept certain obligations, including nondiscrimination on the basis of gender and sexual orientation. The commenter also stated that the concept of religious exemptions is irrational and unworkable and inherently subjective. The commenter asserted that we would not entertain people indulging a religious belief to discriminate against racial groups, and to allow discrimination against sexual groups is equally absurd.

Discussion: The Department understands that several commenters' opposition to the proposed changes stemmed from their opposition to religious exemptions generally. However, the Title IX statute explicitly provides for an exception to Title IX for an educational institution which is controlled by a religious organization if the application of Title IX would not be consistent with the religious tenets of that organization. This is one of nine specific exemptions to the prohibition against discrimination on the basis of sex that Congress included in Title IX before adopting the statute.[134] The Department is charged with implementing and administering this law, but it did not create the religious exemption from Title IX, and it has no authority to disregard the statutory text.[135]

Changes: None.

Advance Notice of Religious Exemptions

Require Advance Notice

Comments: Some commenters asserted that the proposed changes to § 106.12 were particularly concerning because students' rights may be denied at exempt institutions with no prior notice, since a school may use the exemption as a defense to a Title IX complaint without ever having officially requested the exemption from the Department. One commenter asserted that the proposed changes to § 106.12 would eliminate the advance notice requirement for religious exemptions. Another commenter opposed the proposed changes to § 106.12 and stated that the current process for obtaining an assurance of an exemption under Title IX is (1) minimally burdensome, (2) provides notice to the public as to what schools are requesting exemptions, and (3) ensures that religion as a basis for the exemption mirrors what is legally permissible.

On the other hand, other commenters expressed support for the Department's position that ''[a]n institution's exempt status is not dependent upon its submission of a written statement to OCR.'' One commenter felt that, although the proposed rule did not propose changes to § 106.12(b), clarification should be added to § 106.12(b) that the law does not require the submission of a letter to claim the religious exemption. One commenter suggested that the Department ought to clarify that schools may inherently assert the religious exemption, rather than having to apply for it. The commenter suggested that the Department modify or eliminate existing § 106.12(b):

> Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

The commenter expressed concern that the phrase ''shall do so'' implies a form of application; whereas, the institution should be able to assert that they have the exemption when they meet the criteria in proposed § 106.12(c). Accordingly, the commenter suggested the following revision:

> Exemption. An educational institution may assert the exemption set forth in paragraph (a) without prior written assurance from the Department. An educational institution may request such written assurance from the Assistant Secretary but is not required to do so.

One commenter suggested a ''tightening'' of the language in proposed § 106.12(c) to clarify that government approval is not needed for a religious exemption. The commenter believed that the phrases ''sufficient to establish'' and ''is eligible to assert'' could be used to claim that an institution must receive the Department's permission to exercise its right to a religious exemption. The commenter suggested that this section be rephrased to clearly indicate that requests by institutions for Department review and opinion are entirely voluntary in nature.

Discussion: The Department has reviewed and considered the comments urging the Department to require advanced publication of an educational institution's religious exemption under Title IX before the institution may claim the exemption. However, the Department declines to adopt a new requirement mandating that educational institutions controlled by religious organizations publicize their invocation

[132] The Department notes that the Title IX regulations were amended on November 13, 2000, to include provisions pertaining to single-sex education.

[133] *See* ''Other Correspondence.'' Office for Civil Rights, Department of Education, *https://www2.ed.gov/about/offices/list/ocr/correspondence/other.html.*

[134] *See* 20 U.S.C. 1681.

[135] Additionally, the RFRA applies to the Department and ''operates as a kind of super statute, displacing the normal operations of other federal laws,'' often mandating religious accommodations and exemptions. *Bostock* v. *Clayton County, Georgia,* 140 S. Ct. 1731, 1754 (2020).

of a religious exemption to students, employees, or other individuals. The Department is not persuaded that such a mandate would be consistent with the Title IX statute, or beneficial overall.

With respect to some commenters' suggestions that the Department modify § 106.12(b), the Department states that the NPRM for these final regulations did not propose, nor do we make here, changes to § 106.12(b). However, the Department's November 29, 2018, NPRM,[136] and the recently released Title IX Final Rule,[137] both address changes to § 106.12(b).

In regard to the comment requesting that the Department clarify that government approval is not needed in order for a recipient to claim a religious exemption, the Department again reiterates that recipients are not required to request a religious exemption from specific provisions of Title IX. If they meet the criteria for a religious exemption, recipients may simply assert the religious exemption at any time, whether before or after an investigation has been opened. The Department's position and interpretation is clear on this point, especially when coupled with the Title IX Final Rule, and further clarification is not needed.

Changes: None.

Other Concerns Related to Proposed Changes to 34 CFR 106.12

Comments: One commenter expressed concern that the Department did not obtain approval of the proposed rule from the Attorney General, in violation of Executive Order 12250. According to the commenter, Executive Order 12250 requires any NPRM that addresses sex discrimination under Title IX to be reviewed by the Attorney General prior to its publication in the **Federal Register**.[138] The commenter noted that the aforementioned authority (although not the authority to approve final regulations) had been delegated to the Assistant Attorney General for Civil Rights.[139]

One commenter asserted that any changes to the Department's Title IX regulations should be done in coordination with the other Federal agencies that have Title IX regulations. The commenter stated that the proposed changes to § 106.12 focus on the Department of Education only, even though there are 25 other Federal agencies with Title IX regulations, and most of those agencies provide financial assistance to the same private schools, colleges, and universities that the Department of Education funds. The commenter also asserted that the Department must work with all other Federal agencies to adopt a common set of standards on this common question of which entities are eligible for exemptions to Title IX. The commenter believed that the Regulatory Flexibility Act requires the Department to identify and address all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. The commenter also believed that Executive Order 12866 requires the Department to avoid regulations that are inconsistent, incompatible, or duplicative with those of other Federal agencies. The commenter contended that it is not sufficient to merely predict that other agencies will amend their Title IX regulations to comport with the Department's proposed changes to § 106.12 in the future. According to the commenter, dissimilarity in Title IX regulations leads to confusion about how different agency Title IX regulations interact among courts and recipients, as has been the case with single-sex schools and classes and dress codes. The commenter stated that the Department may also struggle with inconsistencies because it has entered into delegation agreements with other Federal agencies to handle complaints of discrimination under Title IX and complaints filed with other agencies may be referred to the Department for handling. According to the commenter, this means that the Department may have to investigate, on behalf of another agency, a Title IX complaint at a private school that the Department believes is exempt from Title IX.

Another commenter was concerned that the proposed rule would eliminate religious freedom protections for college preparation and work-study programs intended to help high school students from low income families prepare for college, and would impact federally funded afterschool and summer learning programs for students in high-poverty, low performing schools.

Discussion: First, Executive Order 12250 was signed by President Jimmy Carter on November 2, 1980.[140] This Executive Order states that the Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.[141]

Specifically, section 1–202 of the Executive Order 12250 states:

In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.[142]

As it pertains to the aspects of this NPRM that propose changing the Title IX regulations, the Department is in compliance with Executive Order 12250 because the Department submitted this proposed rule for consideration to the Office of Management and Budget (OMB), and OMB initiated a clearance process with the Department of Justice. Pursuant to this OMB clearance process, the Department of Justice has had an opportunity to review the proposed changes to § 106.12. Additionally, the Department is aware that, pursuant to Executive Order 12250, the Attorney General of the United States must *approve* the final text of any changes to regulations pertaining to Title IX before they take effect.[143]

Next, with respect to the concerns about the Department of Education's Title IX regulations diverging from other Federal agency regulations pertaining to Title IX, we begin by noting that the Department of Education's implementing regulations for Title IX are available at 34 CFR 106.1, *et seq.* In contrast, the Title IX common rule, published on August 30, 2000, covers education program providers or recipients that are funded by other Federal agencies, including the Nuclear Regulatory Commission, the Small Business Administration, the National

[136] 83 FR 61482, 61496.

[137] 85 FR at 30475–82, 30573–74.

[138] Citing sections 1–202, 1–402 of Executive Order 12250; *see also* Memorandum from John Gore, Acting Assistant Attorney General, to Federal Agency Civil Rights Directors regarding Clearance Requirements for Title VI, Title IX, Section 504, and Related Nondiscrimination Regulations and Policy Guidance Documents (Apr. 24, 2018).

[139] 28 CFR 0.51(a).

[140] Exec. Order No.12250, Leadership and Coordination of Nondiscrimination Laws, 45 FR 72995 (Nov. 2, 1980), *https://www.justice.gov/crt/executive-order-12250.*

[141] *See id.*

[142] *Id.* § 1–202.

[143] *Id.* section 1–1.

Aeronautics and Space Administration, the Department of Commerce, the Tennessee Valley Authority, the Department of State, the Agency for International Development, the Department of Housing and Urban Development, the Department of Justice, the Department of the Treasury, the Department of Defense, the National Archives and Records Administration, the Department of Veterans Affairs, the Environmental Protection Agency, the General Services Administration, the Department of the Interior, the Federal Emergency Management Agency, the National Science Foundation, the Corporation for National and Community Service, and the Department of Transportation.[144]

However, the Department of Education is in a unique position with respect to Federal agencies implementing and enforcing Title IX because, as the common rule acknowledges, the Department is (and has historically been) the lead agency for enforcement of Title IX through its guidance, interpretations, technical assistance, investigative expertise, and the amount of resources that the Department commits to enforcement of Title IX. Despite the assertions of some commenters, there is no requirement that there be perfect parity in Title IX regulations across the Federal agencies. Indeed, differences between the Department's regulations and the common rule exist even apart from this rule.

Given the Department's historical role as a leader in Title IX administration and enforcement, it is appropriate that substantive changes to the Title IX regulations originate with the Department. Once the Department's proposed changes to Title IX are in effect, other Federal agencies may consider whether the Department's changes should be reflected in their own regulations. However, the assertion that the Department is prohibited from amending, or that it would be unworkable to amend, the Department's Title IX regulations because other Federal agencies have Title IX regulations that differ slightly from the Department's regulations is simply not a correct statement of law or policy. We do not believe these final regulations would be inconsistent, incompatible, or duplicative with those of other agencies, and have engaged in the interagency review process through OMB's Office of Information and Regulatory Affairs to help ensure that this is the case. Further, we discuss our compliance with the Regulatory Flexibility Act in the ''Executive Orders and Other Requirements'' section of this preamble. The Department acknowledges that it has previously entered into delegation agreements with other Federal agencies to review and enforce complaints filed with those agencies, although OCR has suspended several of these interagency agreements. In any event, if OCR were to accept complaints filed with other agencies as part of a delegation arrangement, OCR would make the necessary coordination efforts to ensure compliance with all laws, including Title IX.

Last, with respect to one commenter who was concerned that the rule would eliminate religious freedom protections for college preparation and work-study programs, § 106.12 would not eliminate existing religious freedom protections for any individual or program. Instead, § 106.12 is designed to codify in part existing OCR guidance with respect to the definition of an educational institution controlled by a religious organization and clarify when such entities are eligible to assert an exemption.

Changes: None.

Proposed 34 CFR 106.12(c)—Definition of ''Controlled by'' a Religious Organization

Comments: Some commenters expressed general support for § 106.12, noting that a recipient can itself be a religious organization that controls its own operations, curriculum, and other features. One commenter asserted that many of the schools in the Jewish community are entities that are wholly independent from a synagogue or other hierarchical body, and thus are not controlled by a religious organization that maintains a separate legal form. The commenter felt that the list of non-exhaustive factors for claiming a religious exemption represented an understanding that religious institutions may be controlled by religion in different ways, yet they are no less religious. In the same vein, another commenter supported the changes because they stated that some Christian and other religious educational institutions are organized and governed by a local board or body of religious leaders, rather than being operated under a hierarchical organization. According to the commenter, for many of these organizations, local control, free of any denominational or hierarchical organization, is a deeply held religious belief and practice.

One commenter was supportive of the proposed changes to § 106.12(c) because, according to the commenter, these changes would preclude the Department from engaging in unconstitutional differentiation among religious institutions based on their connection (or lack thereof) with any outside entity such as a denomination or religious order.

One commenter expressed gratitude for the six added provisions in proposed § 106.12(c) to help explain the ''controlled by'' language. The commenter felt that the list would add clarity for schools and stakeholders. Another commenter also believed that the proposed changes to § 106.12(c)(1)–(7) clarified what constitutes an institution that is ''controlled by a religious organization.'' One commenter supported the proposal to clarify the eligibility to assert religious exemptions under Title IX because it will give students clear parameters for whether the institutions they apply to and attend are eligible for religious exemptions. The commenter also argued, separately, that the proposed rule would expand the limited exemption for religious schools in Title IX to a broader range of schools that can claim their First Amendment rights, and suggested that such an expansion could lead to equality for all schools.

One commenter believed that the criteria in proposed § 106.12(c) would prevent the imposition of a government standard of what constitutes a religious identity on institutions established for a religious educational purpose, and protect an individual's and an institution's free exercise and assembly rights. One commenter supported what they called a broad reading of what could qualify as a religious institution because according to the commenter, it would ensure that the freedom of all types of religious institutions are protected.

In addition, some commenters expressed general concern that the Department's proposal would expand the definition in § 106.12(c) of schools controlled by a religious organization in ways that have nothing to do with religion, which would lead to increased discrimination by schools that were not truly religious, and against the students that Title IX was intended to protect.

Some commenters asserted that the proposed changes to the definition of ''controlled by'' a religious organization in § 106.12(c) would strip the word ''control'' of its intended meaning, and would virtually adopt an expanded religious exemption for schools ''closely identified with the tenets of a religious organization,'' which the commenter

[144] Title IX Final Common Rule for 21 Federal agencies: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (65 FR 52857).

argued was previously rejected by Congress. These commenters believed that if Congress had intended to allow exemptions for educational institutions without regard to the existence of an outside, external religious organization, it would have modeled the language in Title IX on Title VII of the Civil Rights Act of 1964, which allows an exemption for educational institutions without regard to the existence of a religious organization, but instead Congress restricted the religious exemption in Title IX to schools ''controlled by'' a ''religious organization.''

One commenter believed that the Department's statement that it is ''constitutionally obligated'' to broadly interpret the phrase ''controlled by a religious organization'' to avoid religious discrimination among institutions of varying denominations is an incorrect interpretation of the cannon of statutory avoidance, which does not permit an agency to rewrite a statute. The commenter referred to *Jennings* v. *Rodriguez,*[145] when discussing this proposition. The commenter asserted that if a statutory exemption that is limited to educational institutions ''controlled by a religious organization'' unconstitutionally discriminates against religious organizations with different types of structures, then the Department's only choice is not to apply the unconstitutional exemption to anyone. The commenter contended that Congress, in 1972 when Title IX was originally passed, and in 1988 when it was amended, would have wanted to enact Title IX without a religious exemption, if a court were to hold that the limited religious exemption it enacted was unconstitutional. The commenter noted that there is no statutory language in Title IX that can be excised from the religious exemption itself if the ''controlled by a religious organization'' is unconstitutionally limiting, because without this language, the exemption makes no sense. The commenter also asserted that even without the religious exemption in Title IX, an educational institution can invoke the Religious Freedom Restoration Act if it can show that Title IX substantially burdens its exercise of religion.

The commenter further asserted that, if the religious exemption in Title IX as written is unconstitutional, the longstanding course of conduct by Congress demonstrates that it would have wanted Title IX to remain in effect. The commenter noted that Title IX was modeled on Title VI of the Civil Rights Act of 1964, but that Title VI does not have a religious exemption, and neither do Section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975, which were both enacted after Title IX. Thus, the commenter contended that Congress did not think that a religious exemption was necessary in order to place non-discrimination conditions on recipients of Federal financial assistance, even when the type of discrimination was not subject to heightened constitutional scrutiny. The commenter also noted that Congress confronted the question when it reauthorized the statute in 1988 and rejected expanding the religious exemption in Title IX. The commenter also stated that the majority of statutes enacted by Congress addressing sex discrimination by recipients of financial assistance have consistently prohibited sex discrimination without any religious exemptions, including statutes enacted around the same time as Title IX.

One commenter noted that several other Federal statutes enacted around the same time as Title IX provide an exemption involving looser or more informal relationships with religious organizations that do not rise to the level of actual control, which demonstrates that Congress intentionally limited the exemption in Title IX to only instances where an educational institution is controlled by an outside religious organization. This commenter also stated that although courts have not yet interpreted the language ''controlled by'' in Title IX, cases interpreting similar language in other statutes are instructive. The commenter referenced cases interpreting the Federal Unemployment Tax Act (FUTA) and Fair Housing Act (FHA), where courts have demanded a showing of actual or legal control of an entity's governing body to establish that an entity is ''controlled by'' a religious organization. According to the commenter, the language of the FHA religious exemption is narrower than that of Title IX and, thus, the courts' narrow interpretation of the FHA exemption demands an even narrower interpretation in the Title IX context.

One commenter asserted the suggestion that one component of an educational institution can be the religious organization has no basis in the statutory text. The commenter stated that this would make language that Congress has specifically included in other statutes redundant and noted that, in authorizing Federal funds to go to private schools after Hurricane Katrina, Congress exempted ''a non-public school that is controlled by a religious organization or organized and operated on the basis of religious tenets.'' The commenter asserted that the Department has no authority to rewrite Title IX to include language that Congress included elsewhere, but not in Title IX.

One commenter contended that while there may be varied methods of establishing control, it cannot be enough that an educational institution has elected to subscribe to or adopt a particular doctrinal statement or practices because the term ''control'' suggests a more coercive, two-party relationship. The commenter noted that Congress has defined a ''tribally controlled college or university'' to mean ''an institution of higher education which is formally controlled or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes.'' The commenter also noted that under ERISA, a pension plan qualifies for the ''church plan'' exemption if the organization maintaining it is either ''controlled by or associated with a church.'' The commenter further explained that courts use a multi-factor test for determining whether an organization is ''associated with'' a church, but both the IRS and courts have used the commonsense definition of organizational control: ''the ability of church officials to appoint the majority of the trustees or directors of an organization.'' Thus, the commenter asserted, there is no ground to deviate from such a commonsense definition in interpreting the same language in Title IX.

One commenter asserted that when Congress wants to permit an exemption from non-discrimination laws for educational institutions that have relationships with religious organizations not based solely on control, it knows how to do it, but has done so only rarely. The commenter explained that in other situations, for example, Congress has permitted exemptions for ''a non-public school that is controlled by a religious organization or organized and operated on the basis of religious tenets;'' [146] for ''any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization;'' [147] for ''a school that is operated by, supervised by, controlled by, or connected to a religious organization;'' [148] and for ''an institution which is controlled by or

[145] 138 S. Ct. 830, 836 (2018).

[146] Elementary and Secondary Education Hurricane Relief Act, Public Law 109–148, section 107, 119 Stat 2680 (2005).

[147] District of Columbia Appropriations Act, 1990, Public Law 101–168, section 141(b), 103 Stat 1267 (Nov. 21, 1989).

[148] Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, section 3008, 125 Stat 38.

which is closely affiliated with the tenets of a particular religious organization.'' [149]

One commenter noted that Congress considered changes to the religious exemption language in Title IX to expand it beyond ''control'' in 1988 when it expanded the coverage of Title IX in the Civil Rights Restoration Act. The commenter explained that at that time, proponents of an expanded religious exemption in Title IX, including the Department, urged that the language in Title IX be changed to include educational institutions ''closely identified with the tenets of a religious organization.'' [150] The commenter further explained that Congress rejected the proposal to broaden the religious exemption in Title IX, and President Reagan stated that one reason for his veto of the Civil Rights Restoration Act was the ''failure to protect the religious freedom of private schools that are closely identified with the religious tenets of, but not controlled by, a religious organization.'' [151] The commenter believed that the Department has no authority to rewrite Title IX to treat ''controlled by'' as if it encompassed any other types of relationships because Congress considered and rejected this idea.

One commenter believed that the religious exemption in Title IX must be interpreted narrowly to give effect to the statute's primary purpose to protect students and ensure equal access to education through the vigorous enforcement of civil rights. The commenter stated that the Title IX regulations therefore must, as a default rule, aim primarily to realize Title IX's purpose for preventing and addressing sex discrimination in federally funded entities, and if the Department chooses to change this default expectation, it must provide an extremely compelling justification for doing so. The commenter asserted that the Department offered little justification for its broad interpretation of Title IX's religious exemption in the proposed changes to § 106.12(c). The commenter further asserted that the limited nature of Title IX's religious exemption is further underscored by its legislative history, in both its initial drafting and negotiations over later amendments, which make clear that legislators intended and understood the exemption to be narrow.

One commenter was concerned that, contrary to the plain text of the statute, the proposed changes to § 106.12(c) would allow a broad range of schools that are not controlled by a religious organization to discriminate against students and employees based on sex. According to the commenter, approximately one fifth of Maryland colleges and universities describe themselves as having a religious affiliation, regardless of whether they are controlled by a religious organization. The commenter contended that the proposed changes would enable these institutions to use Federal funds to legally discriminate against teachers and students, and such an expansion would leave thousands of Maryland students and teachers vulnerable to sexual harassment, retaliation, and unwarranted disciplinary actions.

One commenter asserted that the proposed changes to § 106.12(c) represent an unwarranted expansion of Title IX's religious exemption. The commenter explained that the Title IX statute includes important limitations about which schools can qualify for an exemption and in particular the school needs to be ''controlled by a religious organization.'' According to the commenter, this means that it is not sufficient for a school to be affiliated with a religion or to follow certain religious principles; the school needs to be controlled by another organization, one that has specific religious tenets and is capable of exerting control over a school.

One commenter generally stated that the Department has no authority to violate or rewrite unambiguous law, citing *Chevron* v. *NRDC,*[152] and contended that the expansion of ''controlled by'' violates the statutory text of Title IX and thus the proposed rule must be withdrawn in its entirety.

Discussion: The Department appreciates comments that the rule ensures that educational institutions that are controlled by religious organizations will be protected by § 106.12. However, to be clear, the Department does not agree with the commenter who supported the proposed regulation because, in the commenter's view, the proposed changes to § 106.12 impliedly expanded the eligibility for religious exemptions to all schools, or to all schools that are associated with religious beliefs. That is not the case, and the Department's regulation only addresses those educational institutions that are controlled by a religious organization. Further, the Department agrees with commenters who stated that it would pose challenges, and perhaps constitutional questions, to offer religious exemptions to some institutions that are controlled by religious organizations but not others, on the sole basis that some religions are required by their tenets not to be associated to an external entity that controls their operations.

The Department understands that some commenters felt that the proposed addition of § 106.12(c) was a departure from a long-established agency protocol pertaining to religious exemptions. However, the Department notes that the provisions in proposed § 106.12(c)(1)–(5) are factors consistent with the Department's past practice in acknowledging an educational institution's religious exemption. For instance, provisions (c)(1) through (c)(3) are consistent with guidance issued by former Assistant Secretary for Civil Rights Harry Singleton to Regional Civil Rights Directors on February 19, 1985.[153] To guide attorneys within OCR as to whether an educational institution may establish ''control'' by a religious organization, the guidance relied on the March 1977 version of HEW Form 639A, which was issued by the former U.S. Department of Health, Education, and Welfare. Proposed provisions (c)(4) and (5) also are consistent with a letter from Acting Assistant Secretary for Civil Rights William L. Smith to OCR Senior Staff.[154]

The Department received both comments in support of and in opposition to the Department's position that, consistent with prior OCR guidance, an educational institution may itself be the controlling religious organization under Title IX. Section 106.12(c)(6), as proposed, is consistent with longstanding OCR practice in recognizing this principle. For example, OCR has long recognized that a school or department of divinity is an educational institution controlled by a religious organization, without any requirement that the school or department of divinity be controlled by a religious organization that is organized as a separate legal entity from the educational institution itself.

While the Department understands the assertions raised by some

[149] Higher Education Amendments of 1992, Public Law 102–325, section 724, 106 Stat 448.

[150] S. Rep. 100–64, at 27 (1987).

[151] 134 Cong. Rec. H1037 (Mar. 22, 1988).

[152] 467 U.S. 837 (1984).

[153] U.S. Dep't of Educ., Office for Civil Rights, Memorandum from Harry Singleton, Assistant Sec'y for Civil Rights, to Regional Civil Rights Directors regarding Policy Guidance for Resolving Religious Exemption Requests (Feb. 19, 1985), available at *www2.ed.gov/about/offices/list/ocr/docs/singleton-memo-19850219.pdf.*

[154] U.S. Dep't of Educ., Office for Civil Rights, Memorandum from William Smith, Acting Assistant Sec'y for Civil Rights, to OCR Senior Staff regarding Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions (Oct. 11, 1989), available at *https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo-19891011.pdf.*

commenters that an educational institution must be controlled by a separate legal entity in the form of an external religious organization in order to qualify for a religious exemption, those assertions are atextual, and the Department's final regulations recognizes that some educational institutions are organized and governed by a local board or body of religious leaders, rather than being operated under a hierarchical organization. The Title IX statute does not require that an educational institution and a controlling religious organization be separate and distinct entities. Further, the Department has long recognized that these entities can be one and the same, such as in the case of schools of divinity.

Additionally, the Department acknowledges that the statutory text leads to potential ambiguities as to which educational institutions are eligible for exemptions, and over the years, the Department has had to develop a system for evaluating what is sufficient to establish that an educational institution is ''controlled by a religious organization.'' The Department has previously shared the parameters of this system with the public through (1) issuing non-binding agency memoranda [155] and (2) publicly posting the Department's responses to letters seeking a religious exemption from Title IX.[156] These procedures left educational institutions in the difficult position of digging through agency memoranda from the 1980s, and reading dozens of letters from OCR, in order to assess their eligibility for asserting a religious exemption under Title IX. Notably, however, many of these documents—including the document that referenced divinity schools being eligible for religious exemptions—were issued before the events described by one of the commenters above occurred, such as the passage of a statute addressing Hurricane Katrina recovery, or President Ronald Reagan's veto of the Civil Rights Restoration Act. The Department thus disagrees with this commenter, who suggested that OCR lacks regulatory authority for § 106.12 because Congress, in other statutes, suggested a distinction between maintaining religious tenets and being controlled by another legal entity that maintains religious tenets. That a different Congress drafted legislation in a different way does not alter the fact that the Title IX statute, as written, does not contain an independent requirement that the controlling religious organization be a separate legal entity than the educational institution. Indeed, the difference between these two categories of educational institutions appears to be a legal formality, in the sense that this comment could imply that forming a new legal entity on paper, and merely having that entity ''control'' the educational institution would, in fact, be sufficient to establish eligibility under the control test. Yet under this rationale, even a school of divinity would need to be controlled by an outside organization that is also a religious organization, contrary to over 30 years of OCR practice. Why Congress would desire such an outcome, even as a policy matter—to say nothing of the constitutional questions that might arise by privileging some religious structures over others—is left unaddressed by the commenter.

The Department agrees with commenters who have asserted that the Department has no authority to change the language in the Title IX statute. The Department does not endeavor to change the language of the statute, or to expand it beyond the scope of its text. The Department sees no textual reason that would require limiting 20 U.S.C. 1681(a)(3) exclusively to schools that are controlled by *external* religious organizations. Accordingly, it will continue to recognize that an educational institution may, in some cases, also be the controlling religious organization.

Moreover, as a separate and independent basis for interpreting the text in the manner above, and as the Department explained in the NPRM, and consistent with many comments described above, the Department recognizes that religious organizations are organized in widely different ways that reflect their respective theologies. Some educational institutions are controlled by a board of trustees that includes ecclesiastical leaders from a particular religion or religious organization who have ultimate decision-making authority for the educational institutions. Other educational institutions are effectively controlled by religious organizations that have a non-hierarchical structure, such as a congregational structure. The Department does not discriminate against educational institutions that are controlled by religious organizations on the sole basis that they are organized with different types of internal structures. Indeed, the Department has long recognized exemptions for educational institutions that are controlled by religious organizations with hierarchical and non-hierarchical structures.

As the Supreme Court explained in *Jennings* v. *Rodriguez,*[157] under the constitutional-avoidance canon of statutory interpretation, when statutory language is susceptible to multiple interpretations, a court may avoid an interpretation that raises serious constitutional doubts, and instead may adopt an alternative that avoids those problems. However, the Supreme Court cautioned that, ''a court relying on that canon still must interpret the statute, not rewrite it.'' Here, the Department is not re-writing the statute. The regulatory language is clearly in line with the text of the statute. The Department does recognize, however, that the phrase ''controlled by a religious organization,'' could potentially give rise to different meanings. In that sense, *Chevron* v. *NRDC* does not preclude an agency from adopting a reasonable interpretation that is both consistent with the text of the statute, and that also, avoids potential constitutional conflicts with the First Amendment. Opting to ''level down,'' however, and having the Department enforce Title IX without regard for any assertion of a religious exemption, would require re-writing the statute that Congress passed. If Congress prefers an outcome where no educational institution is allowed to claim a religious exemption from Title IX, as opposed to all educational institutions controlled by a religious organization, it can amend the relevant statute, but the Department of Education cannot act unilaterally.

The Department proposed § 106.12(c)(7) in recognition that neither Congress nor OCR could ever promulgate an exhaustive and exclusive list of criteria by which an educational institution may assert an exemption under Title IX. This provision is consistent with the Department's

[155] *See* U.S. Dep't of Educ., Office for Civil Rights, Memorandum from William Smith, Acting Assistant Sec'y for Civil Rights, to OCR Senior Staff regarding Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions (Oct. 11, 1989), available at *https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo-19891011.pdf;* U.S. Dep't of Educ., Office for Civil Rights, Memorandum from Harry Singleton, Assistant Sec'y for Civil Rights, to Regional Civil Rights Directors regarding Title IX Religious Exemptions (Aug. 2, 1985), available at *https://www2.ed.gov/about/offices/list/ocr/docs/singleton-memo-19850802.pdf;* U.S. Dep't of Educ., Office for Civil Rights, Memorandum from Harry Singleton, Assistant Sec'y for Civil Rights, to Regional Civil Rights Directors regarding Policy Guidance for Resolving Religious Exemption Requests (Feb. 19, 1985), available at *https://www2.ed.gov/about/offices/list/ocr/docs/singleton-memo-19850219.pdf;* Assurance of Compliance with Title IX, HEW Form 639–A (Mar. 18, 1977), available at *https://www2.ed.gov/about/offices/list/ocr/docs/hew-form-639-a-1977.pdf.*

[156] *See* Department website at *https://www2.ed.gov/about/offices/list/ocr/correspondence/other.html.*

[157] 138 S. Ct. 830, 836 (2018).

established position that an educational institution may show that it is ''controlled by a religious organization'' through innumerable facts and circumstances that are unique to that educational institution and/or the controlling religious organization.

Finally, the Department has changed the first sentence of proposed § 106.12(c) to clarify and reiterate that an educational institution must be controlled by a religious organization to be eligible to assert a religious exemption from Title IX, and that it is the tenets of the religious organization that are referenced in 20 U.S.C. 1681(a)(3). A few commenters pointed out that the proposed language in § 106.12(c) of the NPRM did not explicitly mention that the recipient must be controlled by a religious organization. The Department understands and appreciates the points raised by these commenters, and the Department has amended the language of § 106.12(c) to include the ''controlled by a religious organization'' language, and to clarify that the tenets referenced in 20 U.S.C. 1681(a)(3) are those of the religious organization.

Changes: The Department has changed the first sentence of proposed § 106.12(c) to further clarify that an educational institution must be controlled by a religious organization, as contemplated under subsection (a), to be eligible to assert a religious exemption.

Change to Longstanding Policy/Need for Such a Change

Comments: One commenter asserted that there is no evidence that the proposed changes to the definition of ''controlled by'' a religious organization in § 106.12(c) are needed. The commenter stated that hundreds of schools have requested religious exemptions under Title IX, and not a single request has been denied. Another commenter asserted that even under the existing criteria for seeking an exemption under Title IX, schools with loose ties to religious organizations have claimed to satisfy the test and sought exemptions.

Some commenters were concerned that the proposed changes would alter the standard for religious exemptions under Title IX, which has been in place for more than 30 years. One of these commenters also was concerned that the proposed changes to § 106.12(c) would replace the longstanding test with a sweeping and vague standard that will create more, rather than less, ambiguity about which schools are eligible for a religious exemption under Title IX, which will create confusion for students and schools. Another of these commenters also expressed general concern that the new test would add a range of new bases that a school can rely on to claim the exemption.

Discussion: The Department does not agree with commenters' arguments that the new provisions create more ambiguity about which educational institutions may assert a religious exemption. The new provisions spell out specific requirements—many of which have been interpreted and applied for decades by OCR—for educational institutions to refer to when considering whether to assert a religious exemption. Additionally, with respect to § 106.12(c)(5), the language references a specific accreditation regulatory provision that educational institutions will be able to review and consider before asserting a religious exemption.

The Department appreciates commenters' concerns but reiterates that the final rule is designed to put into place clear parameters for when an educational institution can be determined to be controlled by a religious organization. Commenters' argument that no educational institution has previously been denied a religious exemption is not a reason to avoid having clear parameters for how to establish control, or to avoid embracing the value of enshrining into regulations, which have the force and effect of law, standards that have only been expressed in non-binding guidance. To be clear, a school that merely has loose ties to religious teachings or principles, without establishing ''control'' by a religious organization, is not eligible to assert a religious exemption.

Changes: None.

Proposed 34 CFR 106.12(c)—Tenets of the Religious Organization

Comments: Some commenters expressed concern that proposed § 106.12(c) is inconsistent with Title IX because it would permit an educational institution to assert an exemption when application of Title IX would not be consistent with merely its practices (not tenets). The commenters asserted that the term ''practices'' is vague and ambiguous. The commenters further asserted that the Department has no authority to rewrite the Title IX statute via regulation.

One commenter contended that the exemption in the Title IX statute addresses the religious tenets of the religious organization and not, as the proposed changes to § 106.12(c) would have it, the tenets of the educational institution. The commenter asserted that when Congress wants a school to be exempt based on its own religious tenets, it knows how to do it. The commenter pointed to the religious exemption provision for the Federal voucher program for DC, which exempts a participating private school ''to the extent that the application of'' the prohibition against sex discrimination ''is inconsistent with the religious tenets or beliefs of the school.'' The commenter stated that the Department has no authority to rewrite the exemption in Title IX to include language that Congress included elsewhere, but not in Title IX.

Discussion: Following review of comments on the NPRM, the Department has re-evaluated whether § 106.12(c) should state that the criterion in § 106.12(c) shall be sufficient to establish that an educational institution may assert a religious exemption to the extent that application of this part would not be consistent with its religious ''tenets or practices.'' After further consideration, the Department has opted to use only the word ''tenets,'' which mirrors the language of the statute.

The Department understands that some commenters asserted that the religious exemption under Title IX only exists when a Title IX obligation conflicts with the religious tenets of a controlling religious organization. As the Department has explained in both the NPRM and throughout this discussion of comments, OCR has long recognized that an educational institution may itself be the controlling religious organization. Thus, an educational institution that itself is a religious organization that controls its own operations may point to its own religious tenets when claiming a religious exemption under Title IX.

Changes: The Department removed the word ''practices'' from the first sentence of § 106.12(c).

Proposed 34 CFR 106.12(c)(1)–(4)'s Inclusion of the Phrase ''a Statement.''

Comments: One commenter was concerned that the language in § 106.12(c)(1)–(4) put a burden on the recipient to taken action in claiming the religious exemption by submitting a statement to the Assistant Secretary for Civil Rights. This commenter felt that the recipient should be able to assert the exemption when the recipient meets the criteria, not when they submit a statement to the Assistant Secretary, and that the language implied that a statement would need to be submitted to OCR for consideration.

Discussion: The Department seeks to clarify that educational institutions claiming a religious exemption do not need to submit any such statements to OCR. To highlight this point, in the final

regulation, the Department removed the words ''a statement'' from the beginning of subsections § 106.12(c)(1)–(4).

Changes: The Department removed the words ''a statement'' from § 106.12(c)(1)–(4).

Proposed 34 CFR 106.12(c)(4)

Comments: One commenter asserted that proposed § 106.12(c)(4) would substantially expand the eligibility for a religious exemption to schools that are not, in fact, controlled by religious organizations. This commenter was concerned that there is no requirement in this subsection that a statement of doctrines or religious practices be derived from a religious organization, or that the educational institution have any relationship with a religious organization.

Discussion: As the Department has explained in both the NPRM and throughout this discussion of comments, OCR has long recognized that an educational institution may itself be the controlling religious organization in the case of schools of divinity.[158] Thus, an educational institution may point to its own religious tenets when claiming a religious exemption under Title IX.

Under this proposed subsection, there is no requirement that the doctrinal statement or statement of religious practices be derived from an external religious organization. The Department recognizes that religious organizations are organized in different ways that may reflect their respective theologies. The Department does not discriminate against educational institutions that are controlled by religious organizations with different types of structures, including educational institutions that are their own controlling religious organization.

Although these educational institutions may not have a formal legal relationship with another entity that controls their operations, they are nonetheless eligible for a religious exemption under Title IX. The Department does not find the arguments that there must be a specific relationship between the educational institution and an *external* religious organization to be persuasive, given that nothing in the text indicates such a requirement, and the fact that the requirement would seem to impose a legal hurdle that would differently affect different religions, and would have little or no practical policy benefit. These commenters never explain why Congress would have wanted, as a policy matter, to encourage educational institutions to form external legal entities, and then have those entities ''control'' the educational institution, before an exemption could be asserted. Additionally, and as a separate basis for § 106.12, the Department is constitutionally obligated to broadly interpret ''controlled by a religious organization'' to avoid religious discrimination among institutions of varying denominations that have different governance structures.[159]

Changes: As discussed above, the Department removed the words ''a statement'' from § 106.12(c)(1)–(4).

Proposed 34 CFR 106.12(c)(5)'s Reference to Moral Beliefs

Comments: Many commenters were concerned that, under proposed § 106.12(c)(5), a religious exemption may be granted to an institution that ''subscribes to specific moral beliefs'' without that institution being ''controlled'' by a religious organization. Some commenters felt that this was a substantial expansion of the religious exemption under Title IX.

Some commenters argued that establishing a ''control'' test based on moral beliefs would open the door for many more schools—beyond those that are actually controlled by a religious organization—to demand an exemption. Many commenters contended that proposed § 106.12(c)(5) would allow institutions to claim a religious exemption from Title IX, even if they had no meaningful relationship at all with a religious organization. One commenter argued that, under the proposed language, educational institutions may receive religious exemptions even if they believe in secular moral principles.

Some commenters felt that the proposed expansion of the religious exemption under Title IX was unwarranted. One commenter felt that proposed § 106.12(c)(5) would distort the boundaries of the religious exemption beyond any resemblance to the statutory language.

One commenter expressed concern that institutions did not need to identify any particular religion that controls them, or a religion from which their beliefs stem, to qualify for a religious exemption under proposed § 106.12(c)(5). The commenter felt that, if institutions are not required to tie the religious exemption to a specific religion or religious belief, this proposed subsection would undermine Title IX's protections.

One commenter asserted that proposed § 106.12(c)(5) was the most concerning part of the proposed changes to § 106.12, because it would allow schools to simply state that they ''subscribe to specific moral beliefs or practices'' to claim a religious exemption, without the institution subscribing to a specific religious belief or being controlled by a specific religious institution. The commenter was worried that this scenario would give any institution carte blanche to expel pregnant or parenting students, ignore sexual harassment in the classroom, or deny women scholarships or jobs based solely on their sex, without having to establish anything related to religious tenets or affiliation.

Some commenters believed that proposed § 106.12(c)(5), in conjunction with other parts of the proposed changes to § 106.12, would render the phrase ''controlled by a religious organization'' meaningless. One commenter explained that, under proposed § 106.12(c)(5), institutions would no longer be required to demonstrate any connection to a religious organization, let alone that they are controlled by a religious organization.

One commenter asserted that the Department has no authority to transform the religious exemption in § 106.12 into a ''moral'' exemption, or to extend it to any organization not ''controlled by a religious organization.'' In that vein, one commenter contended that the proposed ''moral beliefs'' provision was the one that most exemplified the objection that the rule relaxed the requirements for educational institutions to claim an exemption, arguing that a school need not even subscribe to a religious belief to be exempt.

One commenter expressed concern that, if the proposed changes to § 106.12 were adopted, the Department's position would be that schools meet the ''controlled by a religious organization'' test simply by saying that they ''subscribe to specific moral beliefs or practices.'' The commenter noted that schools seeking an exemption under proposed § 106.12 do not need to point to any particular religious organization that controls them, or a religious organization that those moral beliefs or

[158] *See, e.g.,* U.S. Dep't of Educ., *Policy Guidance for Resolving Religious Exemption Requests* (Feb. 19, 1985), *available at www2.ed.gov/about/offices/list/ocr/docs/singleton-memo-19850219.pdf.*

[159] *Larson* v. *Valente,* 456 U.S. 228, 244 (1982) (''The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.''); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171, 202 (2012) (Alito, J., concurring; joined by Kagan, J.) (arguing that a broad, functionalist interpretation of religious teachers for purposes of the ministerial exception is necessary to be inclusive of faiths like Islam and Jehovah's Witnesses).

practices come from. Further, the commenter contended that the proposed § 106.12(c)(5) does not even say that those moral beliefs or practices have to be connected to religion at all. Thus, as proposed, according to the commenter, § 106.12 could allow a school with only a tenuous relationship with religion to claim an exemption.

One commenter stated that the ''moral beliefs and practices'' language in proposed § 106.12(c)(5) is ''strikingly ambiguous and wholly unconnected to religion altogether.'' The commenter stated that moral beliefs are difficult to define and may not have grounding in religious practice; some may be indirectly inspired by religion, but not tied to religion explicitly. The commenter stated that, by conflating moral beliefs with religion, the proposed changes to § 106.12 would open the religious exemption to widespread abuse by institutions with no religious connection that want to limit their obligations and liability under Title IX.

One commenter asserted that the broad language in proposed § 106.12(c)(5) does not clarify the religious exemption, but rather muddles it. This commenter urged the Department to remove the ''moral belief'' language from this subsection because moral institutions are not the same as religiously-owned institutions, and because the commenter suggested that seeking permission to discriminate on the basis of sex is never an expression of morality.

Other commenters were concerned that proposed § 106.12(c)(5) did not require the governing body of an institution, or a controlling religious organization, to approve the statement of moral beliefs or practices upon which the religious exemption is claimed. One commenter was concerned that the statement of moral beliefs and principles in proposed § 106.12(c)(5) did not have to be included in any official document, it did not have to be enforced consistently, and it did not have to be available to students before an institution could claim the religious exemption. One commenter was concerned that the statement of moral beliefs and principles did not have to be reflected in any official school documents or policies or accompanied by any evidence of prior positions on the stated moral principles. One commenter expressed concern that an educational institution could submit a ''statement that the educational institution subscribes to specific moral beliefs or practices, and a statement that members of the institution community may be subjected to discipline for violating those beliefs or practices,'' without a requirement that these statements need to be ''written, published, or otherwise made available to the institution's community, approved prior to a discriminatory act, or otherwise enforced by the school.'' One commenter was concerned that proposed § 106.12(c)(5) applies to schools whose ''moral beliefs and practices'' do not appear in writing, are not consistently enforced, or are simply a post-hoc rationalization asserted to rebut discrimination claims in the context of litigation.

One commenter posited that the statement of moral beliefs and principles would not even need to exist until a student filed a complaint of discrimination, at which time an institution may claim a religious exemption from Title IX based on non-religious moral beliefs. One commenter was concerned that students and employees would have no notice that their school believes itself exempt from Title IX's requirements until after they are harmed by discrimination and ask their school to take protective or remedial action.

One commenter believed that students would feel that that they were protected from sex-based discrimination until they experience such discrimination and try to file a complaint. The commenter was concerned that institutions would then make a disclosure that they are exempt from Title IX requirements.

Discussion: As outlined above, the Department received considerable comment on the inclusion of proposed § 106.12(c)(5) in the NPRM. Most of these commenters expressed concern that the ''moral beliefs or practices'' language would significantly increase the number of institutions that could seek a religious exemption from Title IX. Some commenters opined that the ''moral beliefs or practices'' language could even apply to secular educational institutions, resulting in an outcome that a secular institution would be claiming a religious exemption from compliance with certain provisions of Title IX.

As stated in the NPRM, the proposed paragraph (c)(5) was based in part on a letter from Acting Assistant Secretary for Civil Rights William L. Smith to OCR Senior Staff.[160] That letter details examples of certain information that schools provided in the past to assist OCR's analysis as to whether a religious exemption assurance request is supported, and it specifically includes the ''moral belief and practices'' language in proposed § 106.12(c)(5). However, after further consideration, the Department agrees with the commenters who have expressed that this language is too expansive. The Department can envision a scenario wherein an educational institution would attempt to utilize § 106.12(c)(5) to avoid Title IX obligations based upon ''moral beliefs and practices'' that are not even tangentially tied to religion. We believe this criterion is too broad as written and agree with the commenters who expressed concern that this provision could exceed the scope of the statutory text.

The Department acknowledges the concerns that schools could invoke pretextual moral beliefs or quickly develop moral beliefs once they are accused of discrimination. We believe our removal of the provision regarding moral beliefs from the final regulations addresses these commenters' concerns.

Changes: The Department removed proposed § 106.12(c)(5) from the non-exhaustive list of criteria for establishing a religious exemption.

Proposed 34 CFR 106.12(c)(6)

General Opposition

Comments: One commenter expressed concern that proposed § 106.12(c)(6) would permit a religious exemption upon a statement that ''the educational institution is asserting that the educational institution is itself the controlling religious organization,'' provided that the statement ''includes, refers to, or is predicated on religious tenets, beliefs, teachings.''

One commenter contended that proposed § 106.12(c)(6) would exempt a school from Title IX's requirements when a governing body of a school approves a statement that ''includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.'' The commenter stated that approval of such a statement does not transform a school's governing body into a controlling religious organization as required by Title IX.

One commenter asserted that, under an expansive reading of proposed § 106.12(c)(6), an institution's statement to claim a religious exemption could include a secular statement on any topic, as long as it is simply ''predicated upon''—that is, it draws from or is inspired by—religious teachings.

[160] U.S. Dep't of Educ., Office for Civil Rights, Memorandum from William Smith, Acting Assistant Sec'y for Civil Rights, to OCR Senior Staff regarding Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions (Oct. 11, 1989), available at *https://www2.ed.gov/about/offices/list/ocr/docs/smith-memo-19891011.pdf.*

One commenter asserted that, if proposed § 106.12(c)(6) is implemented, ''a single, post hoc board-approved statement referring to any religious beliefs would permit an institution to disregard Title IX's prohibitions against sex discrimination.'' The commenter expressed concern that the statement would not even need to be included in any official document, be enforced consistently, or made available to students. The commenter was also concerned that the statement would not even need to exist until after a student files a complaint for discrimination.

One commenter contended that under proposed § 106.12(c)(6), an institution would be able to get an exemption if it makes a statement that is loosely inspired by religious teachings, even if that statement does not mention religion explicitly.

On the other hand, one commenter supported the clarity added to proposed § 106.12 by the Department, specifically to proposed § 106.12(c)(6) to expressly acknowledge that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features. This commenter noted that it represented many different denominations, as well as non-denominational schools, and that all of the schools are distinctly Christian, but the hierarchy and structure vary. The commenter believed that the non-exhaustive factors in proposed § 106.12(c) represent an understanding that religious institutions may be controlled by religion in different ways, yet are no less religious.

Discussion: Proposed § 106.12(c)(6) provided that an educational institution was eligible to assert the exemption if the educational institution had a statement that is approved by its governing board and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings. This provision echoes the discussion above, stating that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features. In short, an educational institution's assertion of an exemption pursuant to § 106.12(c)(6), is not, without more, a concession that it is controlled by an external religious organization. Instead, the educational institution is asserting that the educational institution is itself the controlling religious organization.

The Department acknowledges some commenters' general disagreement with the proposition that an educational institution could be its own controlling religious organization. However, proposed § 106.12(c)(6) is consistent with longstanding OCR practice in recognizing that the educational institution may itself be the controlling religious organization. For example, OCR has long recognized that a school or department of divinity is an educational institution controlled by a religious organization without any requirement that the school or department of divinity be controlled by an external religious organization. Additionally, § 106.12(c)(6) aligns well with the Department's recently published definition of ''religious mission'' in 34 CFR 600.2.[161] In that provision, a ''religious mission'' is defined as ''[a] published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings'' in the context of regulations about eligibility for Federal student aid under Title IV of the Higher Education Act of 1965, as amended. Where an educational institution has a religious mission, as defined in § 600.2, it may choose to assert an exemption to the extent application of Title IX and its implementing regulations would not be consistent with the institution's religious tenets.

While one commenter asserted that, under an expansive reading of proposed § 106.12(c)(6), an institution's statement to claim a religious exemption could include a secular statement on any topic, as long as it is simply ''predicated upon'' religious tenets, beliefs, or teachings, the Department notes that this provision is not meant to be read ''expansively'' or ''narrowly.'' It is meant to be read for what it is: an example of an educational institution that is controlled by a religious organization, because it maintains a religious mission. That a school has and maintains a religious mission, as defined in 34 CFR 600.2, is sufficient to establish that it is an educational institution controlled by a religious institution. Of course, if the school does not meet the definition of an institution with a religious mission, it cannot avail itself of this provision. And with respect to commenters who argued that educational institutions might avail themselves of this provision *after* a complaint with OCR has been filed, the Department thinks that it is unlikely that educational institutions will—consistent with the changes being made to this provision—publish an institutional religious mission merely for the purpose of defending themselves from an OCR complaint. In any event, no part of the 20 U.S.C. 1681(a)(3) suggests that adopting a religious mission after an OCR complaint is filed is impermissible, or that schools may not assert a religious exemption once OCR receives a complaint involving an educational institution. Indeed, OCR's practice is to evaluate assertions of religious exemptions even after a complaint has been filed with OCR. If OCR receives a complaint involving a recipient's adoption of a religious mission after a complaint was filed, or a complaint involving a recipient's assertion of a religious exemption after a complaint was filed, OCR will carefully evaluate and consider the facts and circumstances of that complaint and respond appropriately.

After careful consideration of the comments pertaining to the various structures utilized by the religious institutions and/or the controlling religious organizations, the Department has opted to make changes to the final regulation to even further bring it into line with the Department's recently published definition of ''religious mission.'' The Department's definition of ''religious mission'' in 34 CFR 600.2 defines ''religious mission'' as ''[a] published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings'' in the context of regulations about eligibility for Federal financial student aid under Title IV of the Higher Education Act of 1965, as amended. An educational institution that has a religious mission, as defined in § 600.2, may choose to assert an exemption to the extent application of Title IX and its implementing regulations would not be consistent with the institution's religious tenets. Here, the Department sees merit in aligning this portion of the regulation with the recently adopted definition of ''religious mission'' in 34 CFR 600.2 in order to promote congruency in the language referencing these same types of recipients across the Department's regulations.

Changes: The provision is revised to refer to a ''published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.'' The Department will re-number proposed § 106.12(c)(6) to reflect the deletion of proposed § 106.12(c)(5). Accordingly, proposed § 106.12(c)(6) will appear as § 106.12(c)(5) in the final regulation.

[161] 84 FR 58834, 58914 (Nov. 1, 2019) (revising definition in 34 CFR 600.2).

Proposed 34 CFR 106.12(c)(7)

Comments: Some commenters expressed concern about the use of the phrase ''other evidence,'' suggesting that this would lead to an even lower threshold for obtaining a religious exemption under proposed § 106.12(c)(7). One commenter was concerned that proposed § 106.12(c)(7) would invite institutions to seek a religious exemption even when they cannot meet the ''demonstrably low'' threshold of proposed § 106.12(c)(1)–(6) or identify religious tenets that conflict with Title IX. One commenter expressed concern that proposed § 106.12(c)(7) is a catch-all provision, and that it would permit institutions to establish religious control via any ''other evidence,'' and does not define or otherwise delineate what this ''other evidence'' may be, or how much of this evidence must exist.

One commenter believed that the proposed § 106.12(c)(7) would provide an avenue by which institutions can incorporate any religious belief to justify non-compliance with Title IX regulations. According to the commenter, if proposed § 106.12(c)(7) is adopted, the end result would likely be that institutions with little-to-no connection to religion would be empowered to engage in federally unchecked sex discrimination with no Federal recourse for harmed individuals.

Some commenters were also concerned that proposed § 106.12(c)(7) would substantially expand the religious exemption language in Title IX to include institutions that are not actually controlled by religious organizations. Some of these commenters were concerned that even schools with only a tenuous connection to a religious institution would request religious exemptions. One commenter asserted that, by interpreting the exemption so broadly and departing so far from Title IX's language, the Department would open the door for many more schools—beyond those that are actually controlled by a religious organization—to demand an exemption.

One commenter opposed proposed § 106.12(c)(7) because, under the expanded criteria proposed for religious exemptions, by its own admission, the Department creates a potential unquantifiable expansion of schools that can claim religious exemptions. According to the commenter, this would increase the likelihood that students and residents will attend schools where discrimination on the basis of sex is permitted.

One commenter stated that, by significantly expanding opportunity to receive an exemption, and therefore expanding the numbers of private, charter, and other schools legally permitted to not comply with Title IX's requirements, the proposed changes would plainly undermine Congress's objective.

Some commenters believed that the proposed changes ignored a long-standing test for religious exemption requests and added an overly broad range of new bases that a school can rely on to claim the exemption.

Discussion: The Department appreciated the insightful comments pertaining to the language of § 106.12(c)(7). The Department especially appreciated those comments directed at potential confusion about whether ''other evidence,'' meant any other evidence, regardless of how much or how persuasive the evidence might be.

The Department proposed § 106.12(c)(7) in recognition that Congress did not promulgate an exclusive list of criteria by which an educational institution may assert an exemption under Title IX. Further, the Department acknowledges that there may be ways for an educational institution to establish that it is controlled by a religious organization beyond the criteria articulated in proposed § 106.12(c)(1)–(6). The Department merely seeks to provide flexibility for institutions to assert a religious exemption since there may be innumerable facts and circumstances that an educational institution may wish to use to show that it is ''controlled'' by a religious organization.

The Department's intent in drafting the proposed § 106.12(c)(7), however, was not to empower schools with tenuous relationships to religious organizations to utilize this ''other evidence'' criterion to claim an exemption under Title IX. The concerns pertaining to § 106.12(c)(7) have been duly noted by the Department, and in the final regulation, the Department emphasizes that the ''other evidence'' criterion must include sufficient evidence to establish that the educational institution is, in fact, controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3). Indeed, while the point of the provision is to avoid unnecessarily limiting the scope of what type of evidence could establish control by a religious organization, this ''other evidence'' must be more than, for instance, a scintilla of evidence.

The Department disagrees with the commenters asserting that § 106.12(c)(7) would substantially expand the religious exemption from Title IX. As discussed above, § 106.12(c)(7) was included in this regulation because the Department recognizes that there could be a variety of ways for a recipient to establish that it is eligible for a religious exemption. The Department has always carefully considered the evidence submitted when evaluating a religious exemption from Title IX, and given the wide array of recipients with different structures and belief systems, the Department has determined that it is appropriate to provide some flexibility in the types of evidence that would be sufficient to establish eligibility for the religious exemption. This is not an unquantifiable expansion of the religious exemption, as one commenter asserted. It is, however, an acknowledgment that recipients may use many forms of evidence, including evidence that is not specifically outlined in the other criteria of § 106.12(c), to establish eligibility for the religious exemption. This flexibility is appropriate given the broad religious exemption language in the Title IX statute and given that the Department is subject to the U.S. Constitution, including the Free Exercise Clause, as well as RFRA.

As to the comment that this regulation will allow institutions to incorporate any religious belief into their operations to justify non-compliance with Title IX regulations, and that this will result in institutions with little-to-no connection to religion being empowered to engage in federally unchecked sex discrimination, the Department rejects the assertion that educational institutions will adopt religious beliefs, perhaps as a pretext, in order to avoid their Title IX obligations. Based on public comments, however, the Department has no information to suggest that there are educational institutions that are not currently eligible for a religious exemption, but which will become eligible as a result of this final rule. Additionally, the Department seeks to make clear that abuses of the religious exemption provisions of this regulation will not be unchecked. Individuals who contend that a recipient has improperly claimed a religious exemption from Title IX may file a complaint with OCR. Further, the Department's criteria still require that the recipient to be controlled by a religious organization and, thus, recipients with little-to-no connection to religion would not meet the eligibility standard for claiming the exemption.

Changes: The Department has clarified that ''other evidence'' in § 106.12(c)(6) must be ''sufficient to establish'' that the educational institution is controlled by a religious

organization, pursuant to 20 U.S.C. 1681(a)(3). In addition, due to the deletion of proposed § 106.12(c)(5), proposed § 106.12(c)(7) is re-designated as § 106.12(c)(6) in the final regulation.

Severability

Comments: None.

Discussion: We believe that each of the regulations discussed in this preamble would serve one or more important, related, but distinct purposes. We also believe that each of the paragraphs and provisions in 34 CFR 106.12 would serve one or more important, related, but distinct purposes. Each provision in 34 CFR 106.12 provides a distinct value to the Department, recipients, elementary and secondary schools, institutions of higher education, students, employees, the public, taxpayers, the Federal Government, and other recipients of Federal financial assistance separate from, and in addition to, the value provided by the other provisions. To best serve these purposes and parallel to the severability clauses proposed in the NPRM and included in these final regulations, we include a severability provision in 34 CFR 106.12(d) in the final regulations to make clear that these final regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions. Similarly, the validity of any of the regulations, which were proposed in ''Part 1—Religious Liberty'' of the NPRM, should not affect the validity of any of the regulations, which were proposed in ''Part 2—Free Inquiry'' of the NPRM.

Changes: The Department adds a severability clause in 34 CFR 106.12(d).

34 CFR 606.10 (Developing Hispanic-Serving Institutions Program); 34 CFR 607.10 (Strengthening Institutions Program);[162] 34 CFR 608.10 (Strengthening Historically Black Colleges and Universities Program); 34 CFR 609.10 (Strengthening Historically Black Graduate Institutions Program)

Comments: One commenter expressed support for these proposed regulations because the existing regulation may be seen as excluding any school that teaches its students about theology, and, if interpreted in such a manner, the regulation would violate the First Amendment. According to this commenter, the proposed regulations align with a singular exception in current Supreme Court case law that a government entity may exclude a school or a department whose function is to prepare students to become ministers from an otherwise generally available scholarship program.

One commenter contended that proposed §§ 606.10, 607.10, and 608.10 demonstrate that the Department would allow Federal financial assistance to support religious instruction, religious worship, and proselytization. According to this commenter, the Department is concerned that the current regulations inhibit the ability of institutions to use Federal funds for such activities. This commenter asserted that using Federal funds for such activities is prohibited by the Establishment Clause of the First Amendment and cited *Locke* v. *Davey*[163] to support this assertion.

Discussion: We appreciate the comment in support. The commenter who opposed the proposed regulations misunderstood the Department's proposed changes to §§ 606.10, 607.10, and 608.10, which expressly address unallowable activities or activities that a grantee may *not* carry out under a development grant. The Department proposed revising §§ 606.10(c)(3), 607,10(c)(3), and 608.10(c)(3) to expressly prohibit a grantee from using a development grant for ''activities or services that constitute religious instruction, religious worship, or proselytization.'' The Department also proposed revising § 609.10(c)(3) in this same manner. The Department's revisions align §§ 606.10(a)(3), 607.10(a)(3), 608.10(a)(3), and 609.10(a)(3) with the Department's other regulations such as 34 CFR 75.532 and 34 CFR 76.532 that prohibit grants, subgrants, or state-administered formula grants to be used for religious worship, religious instruction, or proselytization. Accordingly, the Department's proposed revisions do not violate the Establishment Clause of the First Amendment or Supreme Court precedent interpreting the Establishment Clause.

Changes: None.

Comments: None.

Discussion: Sections 606.10(a)(4), 607.10(a)(4), 608.10(a)(4), and 609.10(a)(4) provide in relevant part that a ''school or department of divinity'' means ''an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or solely to enter into some other religious vocation.'' The Department is omitting the second instance of ''solely'' in the definition of ''school or department of divinity'' in §§ 606.10(a)(4), 607.10(a)(4), 608.10(a)(4), and 609.10(a)(4) because the second instance of ''solely'' is redundant. This revision is technical in nature to improve clarity and does not change the meaning of the proposed or final regulation.

Changes: The Department omitted the second instance of ''solely'' in §§ 606.10(a)(4), 607.10(a)(4), 608.10(a)(4), and 609.10(a)(4).

Executive Orders and Other Requirements

Comments: A commenter argued that the NPRM is unlawful because 20 U.S.C. 1098a (§ 492 of the Higher Education Act of 1965, as amended (HEA)) requires the Department to engage in negotiated rulemaking for the proposed regulations, which it did not do. In that section, Congress used the phrase ''pertaining to this subchapter'' when describing regulations for which negotiated rulemaking was required, which the commenter interpreted broadly. The commenter also asserted that the HEA's negotiated rulemaking requirement was particularly relevant in this case because the NPRM's RIA stated that ''some of the changes proposed in this regulatory action would materially alter the rights and obligations of recipients of Federal financial assistance under Title IV of the HEA.'' The commenter also argued that the HEA's master calendar requirement (20 U.S.C. 1089(c)(1)) should apply to these regulations, meaning that regulations that have not been published by November 1 prior to the start of the award year will not become effective until the beginning of the second award year after such November 1 date, July 1.

Discussion: The negotiated rulemaking requirement in section 492 of the HEA applies only to regulations that implement the provisions of Title IV of the HEA, all of which relate to student aid programs or specific grants designed to prepare individuals for postsecondary education programs. Specifically, Title IV contains seven parts: (1) Part A—Grants to Students at Attendance at Institutions of Higher Education; (2) Part B—Federal Family Education Loan Program; (3) Part C—Federal Work-Study Programs; (4) Part D—William D. Ford Federal Direct Student Loan Program; (5) Part E—Federal Perkins Loans; (6) Part F—Need Analysis; and (7) Part G—General Provisions Relating to Student Financial Assistance Programs.

The requirements of section 492 do not apply to every Department regulation that impacts institutions of

[162] The Department notes that 34 CFR 607.10 applies to the Strengthening Institutions Program umbrella, which includes the American Indian Tribally Controlled Colleges and University (TCCU) program and the Alaska Native- and Native Hawaiian-Serving Institutions (ANNH) program.

[163] 540 U.S. 712 (2004).

higher education; instead, they apply exclusively to regulations that implement Title IV of the HEA, in other words, that ''pertain to'' Title IV of the HEA. Section 492 of the HEA does not apply to regulations implementing programs authorized by other titles of the HEA, such as the discretionary grant programs in Title VI, or the institutional aid programs in titles III and V, all of which impact many institutions that also participate in the Title IV student aid programs.

The statement in the RIA that the proposed regulations ''would materially alter the rights and obligations of recipients of Federal financial assistance under Title IV of the HEA'' was included in error, and we have corrected the RIA in these final regulations. Because the programs that are the subject of this rulemaking are not implementing the provisions of title IV of the HEA, the negotiated rulemaking requirement does not apply.

Similarly, the title IV master calendar requirements do not apply to these regulations. The HEA provides that ''any regulatory changes initiated by the Secretary affecting the programs under [title IV] that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date.'' [164] While the Department has acknowledged that these regulations would impact institutions that participate in the title IV student assistance programs, among others, that impact does not trigger the master calendar requirement. These final regulations are not part of a ''program under Title IV,'' and the master calendar requirement therefore does not apply.

Changes: None.

Comments: One commenter stated that the Department did not properly notify and consult with the Small Business Administration early in the rulemaking process, and also that it violated the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) by failing to identify the costs of the proposed regulations on small entities and businesses or to identify alternatives, and that its treatment of small entities also violated Executive Order 13272. The commenter also asserted that the Department failed to provide the public with information about its regulatory flexibility analysis, specifically how many grant recipients are small entities. The commenter cited data provided in a prior rulemaking about the number of HEA Title IV recipients that were small institutions and stated that the failure to address or incorporate that data violated both the APA and Executive Order 13563. The commenter also stated that the Department was required to consider and address alternatives for small entities.

Discussion: Section 605(b) of the RFA states that an agency need not include an initial regulatory flexibility analysis (5 U.S.C. 603) and final regulatory flexibility analysis (5 U.S.C. 604) if it can certify in the notice of proposed rulemaking or final regulations that the rule does not have a significant economic impact on a substantial number of small entities. Consistent with 5 U.S.C. 605, we can and do make this certification in the final rule. Therefore, the requirements in sections 603 and 604 that the commenter cites, including those related to identification of alternatives for small entities, are not applicable to the NPRM or these final regulations, and the Department has met its obligations under the RFA and Executive Order. The notification requirement the commenter referenced in Executive Order 13272 also does not apply, as it applies to ''any draft rules that may have a significant economic impact on a substantial number of small entities.'' [165] Further, because the certification under 5 U.S.C. 605 that this rule does not have a significant economic impact on a substantial number of small entities is based on the fact that this rule does not result in quantifiable costs, the information the commenter refers to from a prior rulemaking related to the number of HEA Title IV recipients that are small entities was not necessary for the Department's compliance with the RFA and related Executive Order, or the public's understanding of and ability to comment on our RFA certification.

Changes: None.

Comments: A commenter contended that the Department did not comply with Executive Order 12866 because the NPRM only identified alternatives relating to adopting different regulations and did not identify why the status quo required additional regulation. According to the commenter, the Department acknowledged in the NPRM that the Department has not identified any significant issues with grantees related to a failure to comply with the First Amendment or stated institutional policies regarding freedom of speech, undercutting the Department's argument that these regulations are necessary.

Discussion: The Department sufficiently identified the alternatives it considered in the NPRM.[166] Issuing guidance documents instead of regulations to address the issues discussed in the NPRM, including in ''Part 1—Religious Liberty'' and ''Part 2—Free Inquiry,'' would prove insufficient because guidance documents are not binding and do not carry the force and effect of law.[167] To address these issues in a clear and enforceable manner, a formal notice-and-comment rulemaking was the most appropriate approach. The Department places conditions on its grants through its regulations, and the Department would not be able to implement the directive in Executive Order 13864 ''to ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable Federal laws, regulations, and policies'' without promulgating regulations. Notice-and-comment rulemaking reinforces our commitment to the rule of law and robust public participation in the development of regulations that govern us.

Despite the guarantees of the First Amendment which applies to public institutions, and despite the ability to choose stated institutional policies at private institutions, courts have been called upon to vindicate the rights of dissident campus speakers, who do not necessarily share the views of the majority of campus faculty, administrators, or students. Without these lawsuits and the added incentive that these final regulations provide, the censorship and suppression of the speech of faculty, other employees, and students could go unredressed. For instance, when a public university, the University of North Carolina Wilmington, denied a promotion to a professor because he had authored newspaper columns about academic freedom, civil rights, campus culture, sex, feminism, abortion, homosexuality, and religion, he sued the university and prevailed. The United States Court of Appeals for the Fourth Circuit concluded that the professor's ''speech was clearly that of a citizen speaking on a matter of public concern'' and, thus, was entitled to constitutional protection.[168] Similarly, the Supreme Court of Wisconsin recently held that a private university breached its contract with a professor over a personal blog post because, by virtue of the adoption of the 1940 AAUP Statement of

[164] 20 U.S.C. 1089(c)(1).

[165] Exec. Order No. 13272, section 3(b), 67 FR 53461 (Aug. 16, 2002).

[166] 85 FR 3219.

[167] *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97 (2015).

[168] *Adams* v. *Trs. of the Univ. of N.C.-Wilmington,* 640 F.3d 550, 565 (4th Cir. 2011).

Principles on Academic Freedom, the post was ''a contractually-disqualified basis for discipline.'' [169]

Additionally, the United States District Court for the Southern District of California recently held that California State University San Marcos had violated the First Amendment by committing viewpoint discrimination against the pro-life student organization, Students for Life, when allocating grants from the university's mandatory student fee.[170] Recent victories in court cases by religious student groups against their public institutions for violating the First Amendment in denying them the same rights, benefits, and privileges as other student groups also persuaded the Department that regulatory action is necessary to address these problems.[171]

Even cases that have settled demonstrate the denial of free speech rights across American college campuses is a serious issue. For instance, the Yosemite Community College District and its administrators settled a First Amendment lawsuit filed by a student whom a constituent college of that District had stopped from handing out copies of the United States Constitution on Constitution Day in a public part of campus.[172] And the University of California at Berkeley settled a high-profile lawsuit in December 2018 alleging that the university selectively had deployed its vague policies to prevent conservative groups from bringing to campus speakers harboring ideas the university administration just did not like.[173]

A violation of the First Amendment at a public institution or a violation of stated institutional policies regarding freedom of speech, including academic freedom, at a private institution is egregious in education. The hallmark of education includes an opportunity to learn from diverse viewpoints and to consider and be challenged by ideas, opinions, theories, and hypotheses. In enacting the HEA, Congress expressly recognized that ''an institution of higher education should facilitate the free and open exchange of ideas'' [174] and that ''no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution[.]'' [175] These regulations align with and advance these legislative goals.

The commenter also contended that there is not a need for regulation because the Department allegedly acknowledged that violations of the First Amendment or stated institutional policies on freedom of speech are rare, but the commenter takes the Department's statements in the NPRM out of context. The Department acknowledged that it is ''unaware of any prior instance in which a violation of the First Amendment or institutional policies regarding freedom of speech raised serious concerns about a grantee's ability to effectively carry out a Department grant.'' [176] We made this statement in the context of final, non-default judgments because the proposed and final regulations state that an institution will only be found to have violated the material condition if there is a final, non-default judgment against that institution. We acknowledge that final, non-default judgments against a public or private institution may be infrequent, but the absence of such a judgment does not necessarily mean that public institutions are complying with the First Amendment or that private institutions are complying with their stated institutional policies regarding freedom of speech, including academic freedom. Individuals may experience a violation of the First Amendment or a stated institutional policy regarding freedom of speech and choose not to file a lawsuit to challenge a public institution or a private institution. A student or employee may risk their education or employment in filing such a lawsuit. They also may fear retaliation from the institution, their peers, their colleagues, or their supervisors. Additionally, many institutions may choose to settle such disputes such that a court never renders a final, non-default judgment. Accordingly, the lack of a final, non-default judgment against an institution does not mean that a public institution has not violated the First Amendment or that a private institution has not violated its own stated institutional policies regarding freedom of speech, including academic freedom. It may mean that the institution remedied any problem before a lawsuit was filed or during any litigation. Remedying such a problem before a final, non-default judgment is rendered saves institutions the cost of litigation, and remedying any such problem during litigation saves the institution the continued cost of litigation. We believe these final regulations will have the additional benefit of increasing and incentivizing awareness about the importance of upholding the First Amendment for public institutions and of complying with stated institutional policies regarding freedom of speech, including academic freedom, for private institutions. Additionally, the Department stated that ''available remedies for the violation [of a material condition of a grant], . . . can include suspension or termination of Federal awards or debarment'' and that ''decisions regarding appropriate remedies are made on a case by case basis.'' [177] The Department further acknowledged that the ''potential suspension or termination of a Federal award and potential debarment would, in the event that they occurred, represent real costs'' but that ''such outcomes would be generally unlikely and difficult to meaningfully predict.'' [178] In this context, the Department stated that ''such violations are rare,'' meaning that such violations of a material condition of a grant that lead to potential suspension or termination of a Federal award and potential debarment are rare.[179] However, the Department believes that violations of the First Amendment and of stated institutional policies regarding freedom of speech, including academic freedom, are a concern for the reasons stated in the NPRM, including the cases cited in the NPRM, and the comments

[169] *McAdams,* 914 NW2d at 737 (holding private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the post was ''a contractually-disqualified basis for discipline'').

[170] *See Apodaca* v. *White,* 401 F. Supp. 3d 1040, 1057 (S.D. Cal. 2019).

[171] *InterVarsity Christian Fellowship/USA* v. *Univ. of Iowa,* 408 F. Supp. 3d 960 (S.D. Iowa 2019), *appeal docketed,* No. 19–3389 (8th Cir. Nov. 5, 2019); *Bus. Leaders in Christ* v. *Univ. of Iowa,* 360 F. Supp. 3d 885 (S.D. Iowa 2019), *appeal docketed,* No. 19–1696, (8th Cir. Apr. 3, 2019).).

[172] *See Van Tuinen* v. *Yosemite Cmty. Coll. Dist.,* Case No. 1:13–at–00729, Doc. No. 1 (E.D. Cal. filed Oct. 10, 2013) (Complaint); *Victory: Modesto Junior College Settles Student's First Amendment Lawsuit,* Foundation for Individual Rights in Education (FIRE) (Feb. 25, 2014), *available at www.thefire.org/victory-modesto-junior-college-settles-students-first-amendment-lawsuit/.*

[173] *See Young America's Found.* v. *Napolitano,* Case No. 3:17–cv–02255, Doc. No. 32 (N.D. Cal. filed Apr. 24, 2017) (Amended Complaint); *see also id.* (Doc. No. 44) (Statement of Interest by the United States Department of Justice) (stating that the University of California at Berkeley's policies violated the First Amendment); Jonathan Stempel, *UC Berkeley Settles Lawsuit over Treatment of Conservative Speakers,* Reuters (Dec. 3, 2018, *available at www.reuters.com/article/us-california-lawsuit-ucberkeley/uc-berkeley-settles-lawsuit-over-treatment-of-conservative-speakers-idUSKBN1O22K4.*

[174] 20 U.S.C. 1011a(a)(2)(C).

[175] 20 U.S.C. 1011a(a)(1).

[176] 85 FR 3217–18.

[177] *Id.*

[178] *Id.*

[179] *Id.*

that we received about proposed regulations 34 CFR 75.500(b)–(c) and 34 CFR 76.500(b)–(c) confirm that such violations are a concern. The Department has not historically suspended or terminated a Federal award or debarred a grantee as the first measure in addressing a violation and instead attempts to secure voluntary compliance from the State, grantee, or subgrantee. Indeed, the Department's regulations provide that the Department may suspend or terminate a Federal award or debar a grantee, if there is a continued lack of compliance and if imposing additional, specific conditions is not successful.[180] The fact that historically we have rarely taken actions such as suspension or termination and that those instances may be rare and difficult to predict does not in any way detract from the concerns about violations of the First Amendment and stated institutional policies regarding freedom of speech that are addressed in case law, the NPRM, and comments.

Changes: None.

Comments: One commenter stated that the Department failed to consult Indian Tribal governments in violation of Executive Order 13175 and the Department's consultation policy. The commenter stated that the proposed regulations' imposition of the First Amendment on Tribally-controlled institutions creates Tribal implications and requires consultation under § 5(a) of Executive Order 13175. The commenter also noted that the Department of Housing and Urban Development, in its parallel NPRM, acknowledged that the proposal had Tribal implications and purported to engage in Tribal consultation on that ground.

Commenters also stated that the Department's federalism analysis in the NPRM was erroneous, or that the NPRM should have included such an analysis under Executive Order 13132. One commenter asserted that the proposed rules would have federalism implications, because by creating loopholes and upending the regulatory regime applicable to government-funded entities that espouse religious viewpoints, they would complicate the ability of State and local jurisdictions to safeguard their workforce and enforce generally applicable anti-discrimination laws such as sex discrimination laws, and that they also would cause economic hardships to State and local governments, in the forms of higher unemployment and greater demand for State and city-funded services. Others asserted that the proposed rules would directly prohibit States from applying their nondiscrimination laws and constitutional protections in the public educational institutions that they fund, putting public schools in the position of having to choose between following State and Federal law as interpreted by the Department. Commenters also asserted that the NPRM was not in compliance with the Unfunded Mandates Reform Act of 1995 (UMRA) because it neither included the requisite analysis, nor qualified for an exemption. In the NRPM, the Department stated that the proposed regulations were exempt under section 4(2) of the UMRA, 2 U.S.C. 1503(2), which excludes any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Commenters asserted that the NPRM instead would create new religious exemptions that surpass the protections found in existing statutes, including RFRA. They stated that the NPRM justified the religious exemptions based on case law, executive orders, and Department of Justice memoranda, and that the RFRA does not create a categorical right that prohibits discrimination. Therefore, they asserted that the exemption from the UMRA was not applicable, and the NPRM should have included a UMRA analysis.

Discussion: With regard to Native American tribal consultation, we note that the comment we received was not from a commenter that identified as a Native American Tribe or from a representative of a Native American Tribe. Section 5(a) of Executive Order 13175 requires each agency to have an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications. In accordance with Executive Order 13175, Section IV of the Department's Consultation and Coordination with American Indian and Alaska Native Tribal Governments policy,[181] provides that the Department will conduct Tribal consultation regarding actions that have a substantial and direct effect on tribes. The policy lists specific programs that serve Native American students or that have a specific impact on Tribes and provides that for those programs, regulatory changes or other policy initiatives will often affect Tribes and, thus, may require Tribal consultation. It further provides that for other programs that affect students as a whole, but are not focused solely on Native American students, the Department will include Native American Tribes in the outreach normally conducted with other stakeholders who are affected by the action. Thus, given that the regulations do not have a substantial direct effect on Indian educational opportunities, we did not engage in Tribal consultation. Accordingly, Native American Tribes had the same opportunity to comment on the proposed rules as other stakeholders.

Additionally, we have revised these final regulations to clarify that we are not imposing the First Amendment on any entity, including any institution controlled by a Tribal government, that is not already legally required to abide by the First Amendment to the U.S. Constitution. We note that generally the Bill of Rights, including the First Amendment, does not apply to Tribes and Tribal governments.[182] The Department is revising § 75.500(b) to state: ''Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter 'public institution'), must also comply with the First Amendment to the U.S. Constitution . . . as a material condition of the Department's grant.'' Similarly, the Department is revising § 76.500(b) to state: ''Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter 'public institution'), must also comply with the First Amendment to the U.S. Constitution . . . as a material condition of the Department's grant.'' The Department notes that ''[p]ublic, as applied to an agency, organization, or institution'' in 34 CFR 77.1 ''means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.'' The Department further notes that in 34 CFR 77.1, ''[p]rivate, as applied to an agency, organization, or institution means that it is not under Federal or public supervision or control.'' Accordingly, if an institution

[180] *See* 34 CFR 75.901 (referencing 2 CFR 200.338); 2 CFR 200.338 (stating Federal awarding agency may suspend or terminate an award if noncompliance cannot be remedied by imposing additional conditions).

[181] U.S. Dep't of Educ., Consultation and Coordination with American Indian and Alaska Native Tribal Governments, *available at www2.ed.gov/about/offices/list/oese/oie/tribalpolicyfinal.pdf.*

[182] *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 56 (1978). The Indian Civil Rights Act (ICRA) extended some of the Bill of Rights to tribes, but the ICRA is not the First Amendment to the U.S. Constitution, and the ICRA does not include an Establishment Clause. 25 U.S.C. 1302(a)(1).

is a public institution that is not legally required to abide by the First Amendment to the U.S. Constitution, then that institution is not required to comply with the First Amendment to the U.S. Constitution as a material condition of the Department's grant. The final regulations concerning the First Amendment, thus, do not apply to Tribal institutions that are not legally required to comply with the First Amendment to the U.S. Constitution.

Similarly, § 106.12(c) in these final regulations clarifies the exemption for an educational institution which is controlled by a religious organization if the application of Title IX and its implementing regulations would not be consistent with the religious tenets of such organization pursuant to 20 U.S.C. 1681(a)(3). Indeed, the revisions to these final regulations with respect to parts 106, 606, 607, 608, and 609 of title 34 of the Code of Federal Regulations are consistent with the Indian Civil Rights Act, which contains language similar to almost the entire First Amendment to the U.S. Constitution *except* the Establishment Clause of the First Amendment. The Individual Civil Rights Act provides in relevant part: ''No Indian tribe in exercising powers of self-government shall make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assembly and to petition for a redress of grievances.'' [183]

These final regulations are consistent with the First Amendment and, thus, do not pose federalism concerns because States are legally required to abide by the First Amendment.[184] Requiring public institutions that are legally required to abide by the First Amendment to the U.S. Constitution to also comply with the First Amendment to the U.S. Constitution as a material condition of the Department's grant does not pose any federalism concerns. Such a requirement does not preclude States from enforcing any anti-discrimination laws because any State anti-discrimination law, including laws that prohibit discrimination on the basis of sex, must be consistent with the First Amendment. Similarly, requiring private institutions to comply with their stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department's grant, does not impose any federalism concerns. The Department does not dictate what a private institution's stated institutional policies must be, and private institutions should comply with all applicable laws, including any State's anti-discrimination laws.

Additionally, the First Amendment does not allow public institutions to treat religious student organizations differently based on their status as a religious organization or on account of their sincerely held religious beliefs, and the Department's regulation with respect to religious student organizations at public institutions is consistent with the First Amendment and also the Religious Freedom Restoration Act, 42 U.S.C. 2000bb, *et seq.* (''RFRA''), which applies to the Department and requires the Department not to substantially burden a person's exercise of religion unless certain conditions are satisfied.[185] As the Department explains in the '''All Comers' Policies for Student Organizations'' subsection in the ''34 CFR 75.500(d) and 34 CFR 76.500(d)—Religious Student Organizations'' section, public institutions may choose to adopt a true ''all-comers'' policy as described in *Christian Legal Society* v. *Martinez,*[186] as long as public institutions do not treat religious student organizations differently than other student organizations under any ''all-comers'' policy. The Department's revision to 34 CFR 106.12 clarifies a statutory exemption under Title IX for institutions controlled by a religious organization and is consistent with the First Amendment and RFRA. Finally, the revisions to parts 606, 607, 608, 609 of title 34 of the Code of Federal Regulations concern programs under the HEA, that the Department is required to administer, and these revisions are consistent with the First Amendment and also the Religious Freedom Restoration Act, 42 U.S.C. 2000bb, *et seq.,* which applies to the Department.

These final regulations apply to entities that choose to apply for and accept a grant or subgrant, Federal financial assistance, or participate in the Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program. Any entity may choose not to accept such a grant or subgrant, Federal financial assistance, or forego participating in a program that the Department administers. The commenters do not provide any evidence to support that these final regulations will lead to increased unemployment or any other negative consequence such that States would bear a greater economic burden with respect to increased unemployment or an increased need for State or local services. Accordingly, these final regulations do not pose any federalism concerns.

We disagree with some commenters' characterization of Executive Order 13132.[187] That Order's goal was ''to guarantee the division of governmental responsibilities between the national government and the States'' and to ''further the policies of the Unfunded Mandates Reform Act[.]'' [188] The purpose of the Unfunded Mandates Reform Act is, in its own words, ''to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and Tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities[.]'' [189] In other words, when the Federal government imposed an *unfunded* mandate on the States (including local governments) and Tribal governments carrying federalism implications and had effects on State and local laws, this Order required the Federal government to consult with State and local authorities. However, these final regulations are entirely premised as a condition of receiving Federal funds, and the recipient has the right to forgo such funds if the recipient does not wish to comply with these final regulations. Additionally, this Order states: ''*To the extent practicable* and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, *and* that is not required by statute'' unless the agency takes a few steps.[190] The use of ''and'' as well as ''to the extent practicable'' indicate that each of these requirements must be met before the agency is compelled to take those additional

[183] 25 U.S.C. 1302(a)(1).

[184] *De Jonge* v. *Oregon,* 299 U.S. 353, 364 (1937) (''Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. . . . The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.''); *Cantwell* v. *Connecticut,* 310 U.S. 296, 303–04 (1940); *Near* v. *Minnesota,* 283 U.S. 697, 707 (1931).

[185] *Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682, 719 (2014) (holding ''person'' within meaning of the Religious Freedom Restoration Act's protection of a person's exercise of religion includes for-profit corporations).

[186] 561 U.S. 661 (2010).

[187] Exec. Order No. 13132, 64 FR 43255 (Aug. 10, 1999).

[188] *Id.*

[189] 2 U.S.C. 1501(2).

[190] Exec. Order 13132, section 6(b), 64 FR 43255 (Aug. 10, 1999) (emphasis added).

steps. These final regulations do not *compel* a recipient to accept grants or subgrants, Federal financial assistance, or any funds through programs under Title III and Title V of the HEA. Moreover, these final regulations are consistent with Title IX and other Federal statutory provisions. Thus, we do not believe that Executive Order 13132 is implicated by these final regulations.

The Unfunded Mandates Reform Act expressly does not apply to ''any provision in a proposed or final Federal regulation that enforces constitutional rights of individuals'' [191] or that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability[.]'' [192] These final regulations enforce the constitutional rights of individuals by requiring public institutions that are legally required to abide by the First Amendment to also comply with the First Amendment as a material condition of a grant or subgrant under 34 CFR 75.500, 34 CFR 75.700, 34 CFR 76.500, and 34 CFR 76.700. As explained more fully in the ''34 CFR 75.500(d) and 34 CFR 76.500(d)—Religious Student Organizations'' section, the First Amendment prohibits public institutions from treating religious student organizations differently than other student organizations on the basis of their status as religious organizations or on account of their sincerely held religious beliefs. As explained throughout this preamble and the NPRM, these final regulations help prohibit discrimination on the basis of religion, and these final regulations are consistent with both the First Amendment and RFRA. Additionally, 34 CFR 106.12(c), enforces a statutory exemption for educational institutions controlled by a religious organization with respect to Title IX, which prohibits discrimination on the basis of sex.

Changes: The Department revised 34 CFR 75.500 and 34 CFR 76.500 to clarify that only public institutions that are legally required to abide by the First Amendment to the U.S. Constitution must also comply with the First Amendment to the U.S. Constitution as a material condition of the Department's grant.

Comments: Commenters asserted that the Department's NPRM did not comply with other Executive orders and statutory requirements. One commenter disputed the Department's treatment of the proposed regulations under Executive Order 13771, stating that since it imposed costs, the Department should identify two deregulatory actions with cost savings.

In addition, commenters stated that the proposed rule violated the Treasury and General Government Appropriations Act of 1999, note to 5 U.S.C. 601, because it failed to include a Family Policy Making Assessment, which would assess the proposed rules' impact on family wellbeing.

Discussion: The Office of Management and Budget's guidance implementing Executive Order 13771 describes the offset required by the Executive Order as meaning that ''at least two E.O. 13771 deregulatory actions have been taken per E.O. 13771 regulatory action and that the incremental cost of the E.O. 13771 regulatory action has been appropriately counterbalanced by incremental cost savings from E.O. 13771 deregulatory actions, consistent with the agency's total incremental cost allowance.'' [193] The memorandum defines a ''13771 Regulatory Action'' for relevant purposes as a ''significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero.'' [194] The Department has revised its analysis and has determined that these final regulations impose net costs under Executive Order 13771. In accordance with Executive Order 13771, the Department will identify at least two deregulatory actions.

The provision of the Treasury and General Government Appropriations Act of 1999 cited by commenters pertains to ''policies and regulations that may affect family well-being.'' [195] As the proposed regulations, and these final regulations, did not have a direct effect on families, such an analysis was not required. These final regulations affect institutions that receive a Direct Grant or subgrant from a State-Administered Formula grant program of the Department, which does not have a direct bearing on individual families. Similarly, the revisions to parts 106, 606, 607, 608, and 609, which are described at length in other sections of this preamble, affect institutions and not families. Therefore, the Department, in its assessment of these final regulations has concluded that they will not have a negative effect on families.

Changes: The Department has revised its analysis and has determined that these final regulations impose net costs.

Comments: Commenters asserted that various provisions of the proposed regulations and RIA were arbitrary and capricious, for reasons such as that the Department failed to provide a reasoned basis or justification for them, or because the proposed rule departed from the prior rules and positions without adequate explanation. Commenters cited various legal authorities to substantiate an agency's responsibility to explain the basis for its decision-making, including when changing position on a given issue. Especially with respect to the religious exemption in proposed § 106.12(c), they asserted that, for instance, the proposed rule included reversal of previous Department positions, failed to provide a reasoned justification or adequate basis, did not provide adequate evidence of the need for the proposed rule or its benefits, and failed to provide an adequate regulatory analysis and consider important evidence regarding the rule's impact. They also asserted that the Department failed to consider the impact of the proposed rules on various stakeholders.

Discussion: We agree with commenters that an agency must give adequate reasons for its decisions and consider relevant factors,[196] and that when an agency changes its position, it must display awareness that it is changing position and show that there are good reasons for the new policy. In explaining its changed position, an agency must be ''cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account. . . . In such cases it is not that further justification is demanded by the mere fact of policy change; [ ] a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.[197] On the other hand, the agency need not demonstrate . . . that the reasons for the

[191] 2 U.S.C. 1503(1).

[192] 2 U.S.C. 1503(2).

[193] Office of Mgmt. & Budget, Exec. Office of the President, M–17–21, *Guidance Implementing Executive Order 13771* (OMB 13771 Guidance), at 4 (Q5) (Apr. 5, 2017), *available at www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf.*

[194] *Id.* at 3 (defining an E.O. 13771 Regulatory Action as ''(i) A significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero; or (ii) A significant guidance document (*e.g.,* significant interpretive guidance) reviewed by OIRA under the procedures of E.O. 12866 that has been finalized and that imposes total costs greater than zero.'').

[195] ''Assessment of Federal Regulations and Policies on Families,'' paragraph (c), note to 5 U.S.C. 601.

[196] *See, e,g., Motor Vehicle Mfrs. Ass'n. of United States, U.S., Inc.* v. *State Farm Mut. Automobile Auto. Ins. Co.,* 463 U.S. 29, 43 (1983).

[197] *See Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125–(2016) (*quoting FCC* v. *Fox Television Stations, Inc.,* 129 S. Ct. 1800 (2009 *Encino Motorcars, LLC* v. *Navarro*, 136 S. Ct. 2117, 2126 (2016) (quoting *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515–16 (2009)).

new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better.'' [198]

Throughout the NPRM and this preamble, we discuss the reasoned basis for these regulations, and include explanations for any changes in position regarding each provision in the relevant section, including those specifically mentioned by the commenters. Any changes from the proposed regulations are explained in the relevant sections of this preamble, including the Regulatory Impact Analysis (RIA) section. In particular, the ''34 CFR 106.12 Educational Institutions Controlled by Religious Organizations'' section of this preamble addresses many of these arguments in greater depth. We address comments concerning the RIA, including its legal sufficiency, in depth in the RIA section of this final rule.

Changes: None.

Comments: At least one commenter suggested that Secretary Elisabeth DeVos lacks the authority to issue the NPRM and to promulgate the final regulations because Vice President Michael Pence cast the deciding vote to confirm the Secretary after the Senators were equally divided on her confirmation.[199] The commenter contended that the Vice President is not constitutionally authorized to break a tie for a cabinet member's confirmation, thereby rendering Secretary DeVos' Senate confirmation itself invalid and rendering her actions legally unauthorized.

Discussion: We disagree with commenters' concerns that Secretary DeVos might not be constitutionally empowered to issue the NPRM or the final regulations because the Vice President lacked the constitutional prerogative to cast the tie-breaking vote to confirm the Secretary. Because the Vice President *is* constitutionally empowered to cast the tie-breaking vote in executive nominations, President Trump's nomination of Secretary DeVos properly was confirmed by the United States Senate; and Secretary DeVos therefore may function as the Secretary of Education. Article I, § 3, clause 4 of the Constitution confers on the Vice President the power to break ties when the Senators' votes ''be equally divided.'' Secretary DeVos' service as the Secretary of Education has therefore been lawful and in accordance with the Constitution.

A commenter largely relies on one piece of scholarship to advance this claim.[200] But that source principally concerns the Vice President's power to break Senate ties on *judicial* nominations, not Executive ones. Morse does not develop robustly an argument about the latter. Moreover, Morse acknowledges there is nothing ''conclusive'' about Executive nominations, and argues only that Vice Presidents are without constitutional authority to break ties in judicial nominations.[201] Morse cites three examples from 1806 (Vice President George Clinton voted to confirm John Armstrong as the Minister to Spain), 1832 (Vice President Calhoun cast a tie-breaking vote that defeated the nomination of Martin Van Buren as Minister to Great Britain), and 1925 (Vice President Charles G. Dawes almost cast the tie-breaking vote to confirm President Calvin Coolidge's nominee for attorney general), respectively.[202] But even the evidence in this source points to the fact that the Vice President was always considered to hold the tie-breaking vote for Executive nominations (indeed for all Senate votes). Particularly the nineteenth century examples do seem to show that historically Vice Presidents have enjoyed this widely acknowledged power.[203] Due to this time period's chronological proximity to the Constitution's ratifying generation, this is strong evidence that the original public meaning of the Constitution, left undisputed by intervening centuries of practice, confers the power of breaking Senate ties in executive nominations on Vice Presidents.

As for the argument that the placement of this power in Article I, which generally deals with Congress, meant the power was limited to the legislative votes, this misconceives the context in which the provision exists: that section concerns length of Senate tenure, the roles of congressional personnel, and the Senate's powers, including that of trying impeachments.[204] It is not limited to what the Senate can accomplish but rather encompasses matters about *who* in the Senate gets to do what, concerning all Senate business. In this section of Article I, the Vice President, *as President of the Senate,* accordingly is given the power to break ties. This was the most logical section in which to put this prerogative of the Vice President. And given how the power to cast tie-breaking votes is left open-ended, the most natural inference is that it applies to *all* Senate votes in *all* Senate business. Consequently, this evidence refutes the commenter's claim about Secretary DeVos' confirmation because: (1) This section in Article I simply concerned the functions and prerogatives of the Senate and its various officers, including the Vice President's general tie-breaking authority; and (2) that the Senate's power to try impeachments is included in the same section means that this section is just as applicable to Executive nominations as to anything else (that neither the commenter nor the article is challenging).[205] This analysis shows that Morse's argument, and transitively that of the commenter, is flawed.

Furthermore, one commenter's reference to Senator King's statement in 1850 as supporting a view that could lead anyone in the present day to conclude Secretary DeVos's Senate confirmation is invalid is unhelpful because the overwhelming weight of text and history is against the merits of this pronouncement. Even at that time, King appears to have been one of a handful of people, if that, to express this view. It was not a widely accepted view, before or after.

Finally, a commenter's citation to John Langford's *Did the Framers Intend the Vice President to Have a Say in Judicial Appointments? Perhaps Not* [206] and the reference to the Federalist Papers also misconceive the constitutional text, design, and history. To be sure, Alexander Hamilton in *The Federalist No. 69* does contrast the New York council at the time,[207] with the Senate of the national government the Framers were devising (''[i]n the national government, if the Senate should be divided, no appointment could be made'').[208] The commenter's overall point is unpersuasive. As an initial matter, the Federalist Papers were

[198] *Fox Television,* 129 S. Ct. at 1811 (emphasis in original).

[199] U.S. Senate, Vote: On the Nomination (Confirmation Elisabeth Prince DeVos, of Michigan, to be Secretary of Education), Feb. 7, 2017, *available at https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00054.*

[200] *See* Samuel Morse, *The Constitutional Argument Against the Vice President Casting Tie-Breaking Votes on Judicial Nominees,* 2018 Cardozo L. Rev. de novo 142 (2018) (herein, ''Morse,'' ''the source'' or ''the article'').

[201] *See id.* at 151.

[202] *See id.* at 150–51.

[203] *See id.* at 143–44 n.4.

[204] *See generally* U.S. Const. art. I, sec. 3.

[205] *But see* Morse, *supra* note 196, at 144, 146.

[206] John Langford, *Did the Framers Intend the Vice President to Have a Say in Judicial Appointments? Perhaps Not,* Balkanization (Oct. 5, 2018), available at *https://balkin.blogspot.com/2018/10/did-framers-intend-vice-president-to.html.*

[207] *See* The Federalist No. 69, at 424 (Alexander Hamilton) (Bantam Classic ed., 2003) (''[I]f the [New York] council should be divided the Governor can turn the scale and confirm his own nomination.'').

[208] *Id.*

persuasion pieces to convince the People (as sometimes addressed to ''The People of New York,'' etc.) to accept the Constitution. Therefore, while the Papers supply a framework and understanding closely linked to the Constitution's text by some of the authors of that text, it does not supplant the original public meaning of that text itself. Moreover, all *The Federalist No. 69* refers to is that the President *himself* may not cast the tie-breaking vote in the Senate. The *Vice* President, however, may do so, for he is *not* the Executive.

For much of our Nation's history, including when the Equally Divided Clause was written as part of the original Constitution, the President and the Vice President could be from different parties and fail to get along. This Clause gave the Vice President some power and authority independent of the President. There is an important context behind this. Prior to the Twelfth Amendment's adoption, the Vice Presidency was awarded to the presidential candidate who won the second most number of votes, regardless of which political party he represented.[209] In the 1796 election, for instance, voters chose the Federalist John Adams to be President.[210] But they chose Thomas Jefferson, a Democratic-Republican, as the election's runner-up, so Jefferson became Adams' Vice President.[211] Under the Twelfth Amendment, however, usually Presidents and Vice Presidents are elected on the same ticket. But this does not change the Equally Divided Clause, preserving the Vice President's authority to break Senate ties for executive and other nominations. As a result, any argument to the contrary necessarily ignores the constitutional text, design, and history.

Langford and the commenter at issue also misunderstand what Hamilton actually stated in *The Federalist No. 76,* which was: ''A man disposed to view human nature as it is . . . will see sufficient ground of confidence in the probity of the Senate, to rest satisfied not only that it will be impracticable to the Executive to corrupt or seduce a majority of its members; but that the necessity of its co-operation in the business of appointments will be a considerable and salutary restraint upon the conduct of that magistrate.'' [212] Langford reads this to mean that Alexander Hamilton was saying the Executive needs a majority of the voting Senators present to confirm nominations.

Langford's interpretation wrongly conflates the necessary with the sufficient, for Hamilton was saying only that it will *suffice* for a President to get a nominee confirmed with a majority of the Senate, not that he *needs* a Senate majority to get his nominee confirmed. This is all the more so because Senators may *abstain* from voting, so not every Senator will necessarily be voting. Doubtless Hamilton knew this because the Constitution gives the Senate the power to decide its own rules, including quorum, *see* U.S. Const. art. I, sec. 5, cl. 1, 2, and therefore, a President need not even ''corrupt or seduce'' a majority of the *full* Senate, *The Federalist No. 76;* all he needs is a majority of the *voting* Senators. Thus, Hamilton's phrasing indicates not precision but a common parlance. It is, accordingly, too slender a reed (outside the constitutional text, at that) for Langford to base much of his thesis on, providing no support for the commenter's argument.

Langford is also incorrect in saying that ''the Framers situated the Senate's 'advice and consent' powers in Article II, not Article I,'' where the Equally Divided Clause is located, means that the Vice President's tie-breaking power does not apply to nominations. This argument fails because, as noted earlier, it made more sense for the original Constitution's drafters and the ratifying generation to name the Vice President's tie-breaking power right in the same section of Article I when they were spelling out that he would be the President of the Senate. It is a limitation on his role as President of the Senate as well as his prerogative. Article II, by contrast, says what the President can do; and as already noted, when the original Constitution was ratified, the President and the Vice President were two different and often conflicting entities. Langford assumes the modern view that President and Vice President work hand in hand; that was not the original Constitution's presupposition, explaining why Langford's argument (and the commenter's) is flawed.

Langford is also wrong to suggest that because ''the Framers explicitly guarded against a closely divided Senate by requiring a two-thirds majority of Senators present to concur in order to consent to a particular treaty,'' this might show that: ''Perhaps the Framers assumed the default rule [of the Vice President's tie-breaking power] would apply whereby a tie goes to the Vice President; perhaps, instead, the Framers meant to provide for the possibility of a divided Senate, in which case the nomination would fail.'' However, the real reason for these placements is simple and has been alluded to earlier: The Treaty Clause belongs in Article II because the President is the first mover on treaties; the Senate's role is reactive. Also, the Vice President is a different actor from the President under the Constitution. This placement, therefore, has nothing to do with the Vice President's tie-breaking power, which remains universally applicable across Senate floor votes. And even Langford is inconclusive about the reason for this placement and structure of keeping the Treaty Clause separate from the Equally Divided Clause.

Therefore, the Constitution permits the Vice President to cast the tie-breaking vote for executive nominations. Vice President Pence constitutionally cast the tie-breaking vote to confirm President Trump's nomination of Secretary DeVos. The Secretary is a constitutionally appointed officer functioning in her present capacity and suffers from no want of authority to issue the NPRM or to promulgate the final regulations on this or any other matter pertaining to the Department of Education.

Changes: None.

Length of Public Comment Period/ Requests for Extension

Comments: Several commenters asserted that the 30-day public comment period provided for the NPRM was inadequate. Commenters noted that the proposed regulatory changes were substantive, far-reaching, and complex, as opposed to technical, and requested comment periods of a minimum of 60 days. They noted that the implications of the proposed rules for universities and numerous other stakeholders were immense. One commenter stated this was particularly the case if the proposed rule forms the basis of further action by research agencies per Executive Order 13864, and others pointed out that it is a significant regulatory action. Some commenters asserted that the proposed rules reflected significant shifts in long-term legal interpretations and practices. One commenter noted that the rules, if finalized as proposed, would reject key recommendations that were the result of advisory council deliberations and would reverse rules that were proposed for 60-day comment periods.

Commenters claimed that the 30-day comment period did not afford them a 'meaningful opportunity to comment'' as required by the APA and pointed to Executive Orders 12866 and 13563 and the regulatory timeline on *Regulations.gov* suggesting a comment period of 60 days. Commenters noted

[209] *See* U.S. Const. amend. XII.

[210] *See* Jerry H. Goldfeder, *Election Law and the Presidency,* 85 Fordham L. Rev. 965, 974–(2016).

[211] *See id.*

[212] The Federalist No. 76, at 465 (Alexander Hamilton) (Bantam Classics ed., 2003).

that the Department had received requests for extensions of the comment period and that failure to extend the comment period was arbitrary and capricious. Commenters stated that the Department did not include a required justification or finding of good cause or exigent circumstances for a comment period of less than 60 days. Some commenters cited to *Housing Study Group* v. *Kemp,*[213] as authority for the proposition that a comment period should not be less than 60 days.

One commenter stated that the proposed rule did not provide a meaningful cost-benefit analysis, estimates of the scope of the rule's impact, or any evidence to support its conclusions, so the need for stakeholders to undertake an analysis of the rules was all the more essential.

Discussion: We appreciate commenters' concerns about the length of the comment period. We understand the importance of these final regulations to various stakeholder groups and have proceeded thoughtfully and carefully to develop final regulations that balance varying interests appropriately.

The APA does not mandate a specific length for an NPRM comment period, but states that agencies must ''give interested persons an opportunity to participate'' in the proceeding.[214] This provision has generally been interpreted as requiring a ''meaningful opportunity to comment.'' [215] Executive Orders 12866 and 13563, which are mirrored by the timeline commenters referenced on *Regulations.gov*, state that a meaningful opportunity to comment on any proposed regulation, in most cases, should include a comment period of not less than 60 days.[216] However, 60 days is not a mandatory timeframe—case law interpreting the APA generally stipulates that comment periods should not be less than 30 days to provide adequate opportunity to comment.[217] In addition, the designation of a regulatory action as ''significant'' does not automatically require a comment period of longer than 30 days. Contrary to commenters' assertions, the APA does not require a showing of good cause or exigent circumstances for a comment period of less than 60 days,[218] so the rule is not arbitrary and capricious or rendered invalid by the lack of such a showing in the NPRM.

Commenters cited *Housing Study Group* v. *Kemp* to support the proposition that a 30-day comment period is inadequate. However, that case dealt with an interim final rule, which differs from these final regulations in that an interim final rule takes effect immediately or soon after publication, prior to an agency's receipt and/or analysis of any solicited public comments.[219] That is not the case for these final regulations, which we are promulgating through standard APA notice and comment procedures.

We understand commenters' concerns about having an adequate opportunity to comment on the proposed regulations, but believe that the comment period afforded them an adequate opportunity to do so, on all of the issues in the NPRM including those related to Executive Order 13864. The Department's proposed regulations will not necessarily be determinative of other agencies' implementation of Executive Order 13864; in fact, the other agencies' proposals may differ with respect to implementation of that Executive Order. Further, the Department received over 17,000 comments on the proposed regulations, many representing large constituencies. The large number, complexity, and diversity of comments received indicates that the public had adequate time to comment on the Department's proposals. The length of comment periods in past rulemaking proceedings is not necessarily determinative of the proper comment period length for the present rulemaking. Any shifts in policy or departures from prior practice are explained in the relevant sections of this preamble. In addition, we address comments about the sufficiency of the RIA in the applicable section of this preamble.

Changes: None.

Comments: In support of their requests for a longer comment period, several commenters noted that the Administration issued nine interconnected, but distinct proposed regulations on the same day. Given the complexity and wide-ranging impacts of the proposed regulations, commenters did not feel that they had sufficient time to prepare and submit their comments. According to commenters, an individual or entity interested in commenting on one of the agencies' rules would most likely be interested in commenting on all of them. They asserted that each rule required a unique analysis, which the length of the comment period would not allow, and that the short comment period indicated that the Administration was uninterested in public comments. Commenters also referred to an alleged White House statement that the agencies had been working in coordination for months on the proposed rules, and noted this was indicative of the complexity of the task, therefore requiring additional time for comment. One commenter noted that more time was especially appropriate if the Department is to become a model for other agency efforts.

Commenters cited instances of other similar regulations that were published with a longer comment periods, including the related proposed rule published by the Department of Housing and Urban Development (HUD). Commenters stated that this indicates that the Department could have allowed a longer comment period on these proposed regulations and that, since other agencies will need to coordinate with HUD before finalizing their rules, that was another reason to extend the comment period. Other commenters pointed to past revisions of these or similar rules that provided for longer comment periods, including when the Department and other agencies proposed revisions to the same regulations in 2015 and included a 60-day comment period.

Discussion: The Department disagrees that the proposal of the agencies' final regulations on the same timeline did not provide the public a meaningful opportunity to comment. The agencies' proposals were very similar in some areas, such that comments on aspects of one agency's regulations could be submitted in response to other agencies' NPRMs with minor changes. The work undertaken by the various agencies to coordinate their NPRMs facilitated the preparation of more streamlined proposals on which the public could comment in a more efficient manner. Although we are not certain of the manner in which one commenter meant that the Department would be a model for other agencies, the Department's proposal was not intended to lead or supersede that of other agencies. Further, any public statements about that work and preparation would have been reflective of the agencies' efforts, not necessarily those required of public commenters.

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[213] 736 F. Supp. 321 (D.D.C. 1990).

[214] 5 U.S.C. 553(c).

[215] *E.g., Asiana Airlines* v. *F.A.A.,* 134 F.3d 393, 396 (D.C. Cir. 1998).

[216] Exec. Order 12866, Section 6(a), 58 FR 51735 (Oct. 4, 1993); Exec. Order 13563, section 2(b), 76 FR 3821 (Jan. 1, 2011).

[217] *See, e.g., Nat'l Retired Teachers Ass'n* v. *U.S. Postal Serv.,* 430 F. Supp. 141, 147 (D.D.C. 1977).

[218] Instead, 5 U.S.C. 553(b)(B) states that the notice and comment requirements of 553(b) do not apply ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

[219] 736 F. Supp. at 334. Moreover, in that case, the court found the agency's own regulations required that, absent good cause, ''the public be afforded a minimum of 60 days to submit comments.'' *Hous. Study Grp.* v. *Kent,* 739 F. Supp. 633, 635 n.6 (D.D.C. 1990) (citing 24 CFR 10.1).

The Department greatly values the public's comments on the proposed regulations but does not believe that a longer comment period was necessary in this case. HUD's regulations were proposed for a longer comment period due to its unique requirements. Specifically, HUD's regulations state that it is HUD's policy ''that its notices of proposed rulemaking are to afford the public not less than sixty days for submission of comments.'' [220] In addition, the length of comment periods in past rulemaking proceedings is not necessarily determinative of the proper comment period length for the present rulemaking; the Department evaluates the appropriate length of a comment period on an individualized basis for each proposed regulation.

Changes: None.

Comments: Commenters also noted that 20 U.S.C. 6511 was included in authority citations for the proposed regulations. They pointed out that there is no 20 U.S.C. 6511, and inferred that the Department instead intended to cite 20 U.S.C. 6571. Commenters noted that 20 U.S.C. 6571 requires negotiated rulemaking and a 60-day comment period, among other procedural requirements, and stated that the Department did not comply with those requirements. One commenter also questioned how the proposed regulations were authorized by 20 U.S.C. 6571.

Another commenter contended that the Department has no statutory basis for the proposed regulations to require public institutions to comply with certain provisions of the U.S. Constitution, to require private colleges to comply with their own stated institutional policies regarding freedom of speech, including academic freedom, and to require public institutions to treat religious student organizations the same as secular student organizations. This commenter asserted that 20 U.S.C. 1221e–3 and 20 U.S.C. 3474 cannot legally support these proposed regulations.

Discussion: The Department inadvertently included 20 U.S.C. 6511, which is currently cited as the authority for some of the Department's existing regulations and is now obsolete, in the authority citations for some of the proposed regulations. We did not intend to cite that section, or 20 U.S.C. 6571, as authority for these regulations. Indeed, 20 U.S.C. 6571 is part of the Elementary and Secondary Education Act of 1965, as amended, which is not a source of authority for these regulations. We have corrected the authority citations in these final regulations and appreciate that the commenters brought this error to our attention. However, the negotiated rulemaking, 60-day comment period, and other requirements of 20 U.S.C. 6571 are inapplicable to these regulations, so the Department was not required to comply with them.

The Department has authority to promulgate these final regulations under 20 U.S.C. 1221e–3 and 20 U.S.C. 3474, which give the Secretary general authority to make regulations governing the Department's applicable programs and to manage the functions of the Department. These final regulations are consistent with the statutes that govern institutions of higher education. Congress expressly stated in the HEA that ''no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance[.]'' [221] These final regulations also are consistent with the Equal Access Act, which concerns public secondary schools and states: ''It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.'' [222] As explained in more detail in ''Part 1—Religious Liberty'' and ''Part 2—Free Inquiry'' of the NPRM, these regulations also were proposed in response to Supreme Court case law, interpreting the First Amendment, such as the United States Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,*[223] the Religious Freedom Restoration Act, the United States Attorney General's October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty,[224] Executive Order 13798 (Promoting Free Speech and Religious Liberty),[225] Executive Order 13831 (Establishment of a White House Office Faith and Opportunity Initiative),[226] Executive Order 13864 (Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities).[227] The Department notes that in 2016, the Department issued final regulations expressly to ''implement Executive Order 13279, as amended by Executive Order 13559. . . . to guide the policies of Federal agencies regarding the participation of faith-based and other community organizations in programs that the Federal agencies administer.'' [228] The Department cited the same authority, 20 U.S.C. 1221e–3 and 20 U.S.C. 3474, for its 2015 NPRM [229] and subsequent final regulations issued in 2016,[230] as it did for the NPRM underlying this notice-and-comment rulemaking and these final regulations.

Changes: We have revised the authority citations for the final regulations to cite 20 U.S.C. 1221e–3 and 20 U.S.C. 3474.

Effective Date

Comments: One commenter, a public university, requested that the Department delay the effective date sufficiently far in the future (at least eight months) because institutions may be required to revise their policies. This commenter suggested that the final rule should become effective eight months after publication for consistency with the Higher Education Act's master calendar requirement.

Discussion: The Department appreciates the commenter's suggestion; however, the Department does not believe that institutions of higher education will need at least eight months to comply with this final rule. Public institutions of higher education that are already legally required to abide by the First Amendment to the U.S. Constitution will simply also comply with the First Amendment to the U.S. Constitution as a material condition of a grant from the Department under 34 CFR 75.500 and 34 CFR 76.500. Public institutions should not need to review

[220] 24 CFR 10.1.

[221] 20 U.S.C. 1011a(a)(1).

[222] 20 U.S.C. 4071(a).

[223] 137 S. Ct. 2012 (2017).

[224] Jeff Sessions, Federal Law Protections for Religious Liberty, Memorandum for All Executive Departments and Agencies (Oct. 6, 2017), *https://www.justice.gov/opa/press-release/file/1001891/download*.

[225] Exec. Order No. 13798, 82 FR 21675 (May 4, 2017).

[226] Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

[227] Exec. Order No. 13864, 84 FR 11401 (March 26, 2019).

[228] Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 81 FR 19355 (Apr. 4, 2016).

[229] 80 FR 47253.

[230] 81 FR 19405–09.

and revise their policies and practices as a result of this final rule. If public institutions review and revise their policies and practices, then the First Amendment and not this final rule dictates whether their policies and practices should change. Similarly, private institutions of higher education must simply comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of a grant from the Department under 34 CFR 75.500 and 34 CFR 76.500, and private institutions are not required to adopt any particular policy regarding freedom of speech, including academic freedom. Institutions generally comply with their own stated institutional policies and are prepared to suffer consequences such as breach of contract claims or other complaints for failing to comply with their own stated institutional policies.

The other regulations in this final regulatory action clarify the exemption in Title IX, 20 U.S.C. 1681(a)(3), for educational institutions controlled by a religious organization to the extent Title IX or its implementing regulations are not consistent with the religious tenets of such organization. Similarly, the revisions to 34 CFR parts 606, 607, 608, and 609 remove language that prohibits use of funds for otherwise allowable activities if they merely relate to ''religious worship'' and ''theological subjects'' and replace it with language that more narrowly defines the limitations. Such points of clarification do not require eight months of preparation on the part of an institution.

As discussed previously, the master calendar requirements in Title IV of the HEA do not apply to these final regulations. The HEA provides that ''any regulatory changes initiated by the Secretary affecting the programs under [Title IV] that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date.'' [231] These regulations, however, are not promulgated under Title IV of the HEA, and the master calendar requirement does not apply here.

Even though these final regulations do not constitute a ''major rule'' under the Congressional Review Act,[232] such that they may not take effect until 60 days after the date of publication in the **Federal Register**,[233] and even though institutions are not required to review and revise their policies and practices as a result of this final rule, the Department understands that institutions and recipients of Federal financial assistance may *choose* to review their existing policies and practices to ensure compliance with the First Amendment for public institutions and with their own stated institutional policies concerning freedom of speech, including academic freedom, for private institutions. In case institutions would like to review their existing policies and practices, the Department will set the effective date at 60 days after the date of publication in the **Federal Register**.

Changes: None.

Regulatory Impact Analysis

Comments: A few commenters argued that the Department's cost-benefit analysis was unsubstantiated by evidence and failed to consider broad economic and non-economic impacts, primarily discrimination. These commenters asserted that the Department did not conduct a meaningful cost-benefit analysis.

Some commenters argued that the Department's cost-analysis calculation was incomplete and violates the Administrative Procedure Act and Executive Orders 12866 and 13563. One commenter asserted that these legal requirements were violated because the Department did not assess all costs and benefits or select approaches that maximize net benefits.

Another commenter asserted that the Department violated the Administrative Procedure Act and Executive Order 13563 by not releasing information relevant to the cost estimates. One commenter argued that the Department's claim that the proposed regulations would impose zero costs is false and stated that accurate estimates cannot be developed in the absence of more information from the Department.

One commenter asserted that the Department failed to assess the net economic and non-economic effects of the proposed changes, particularly costs for current and prospective students and for schools themselves. This commenter also contended that the Department must consider costs to current and prospective employees who may face higher rates of sex discrimination by religious schools due to these proposed regulations. This commenter asserted that such individuals may face lost wages, fewer future employment opportunities, and long-term health consequences, as well as the more indirect costs of increased discrimination.

Another commenter asserted that the Department did not cite evidence to support the assertion that the number or composition of entities asserting the exemption for educational institutions which are controlled by a religious organization would not substantially change and, thus, there would be no quantifiable costs for the proposed regulation, 34 CFR 106.12(c). One commenter expressed concern that proposed § 106.12(c), regarding the exemption for educational institutions which are controlled by a religious organization, would increase sex-based discrimination, particularly hurting students and employees.

Another commenter asserted that the Department's cost-benefit analysis is flawed because it did not consider direct health and financial costs to beneficiaries who may be prevented from accessing safety net programs, experience discrimination and decreased fairness and respect for their rights, the potential cost-shifting to other health or human service agencies, and more confusion and familiarization costs. This commenter contended that the proposed regulations are economically significant because they cover programs totaling hundreds of billions of dollars and expressed concern that the Department did not fulfill Executive Order 12866. This commenter also argued that the Department failed to consider the total effect on the economy and costs as well as potential costs to beneficiaries, families, communities, and funded organizations.

Discussion: As an initial matter, we note that the NPRM and its associated Regulatory Impact Analysis (RIA) included two parts—Part 1 related to issues of Religious Liberty and Part 2 related to issues of Free Inquiry. However, this final rule only includes changes to a subset of the provisions originally included in Part 1 (specifically 34 CFR parts 106, 606, 607, 608, and 609) and all of the provisions originally included in Part 2.

The analysis pertinent to the relevant provisions in Part 1 addressed proposed changes to 34 CFR 106.12, 606,10, 606.11, 607.10, 607.11, 608.10, 608.12, 609.10, and 609.12. Of those sections, four are severability clauses.

We note that the analysis pertinent to part 2 addressed proposed changes to seven sections (34 CFR 75.500, 75.684, 75.700, 75.741, 76.500, 76.700, and 76.784). Of those sections, three are severability clauses and two are updated cross-references.

While many commenters were not specific about the sources of their concerns, we do not believe commenters intended to imply that there were economic or non-economic impacts of the severability provisions or cross-

[231] 20 U.S.C. 1089(c)(1).

[232] 5 U.S.C. 804(2).

[233] 5 U.S.C. 801(a)(3).

reference updates that were not considered. Severability clauses, generally, do not have any practical effect on the cost implications of any other provisions and only clarify the effectiveness of those provisions in certain circumstances. As such, we generally do not assume severability clauses to have cost implications and decline to do so in this instance. Similarly, updating cross-references does not have any practical effect on cost implications but rather serves only to improve the clarity of regulations. We decline to estimate additional effects from these clauses.

With regard to changes to §§ 75.500 and 76.500, we disagree that there were economic or non-economic impacts, including discrimination, that we failed to consider, or that our analysis was otherwise not meaningful. As noted in the NPRM, the regulatory changes serve primarily to clarify that public institutions must comply with the First Amendment and to require that, in the event there is a final, non-default judgment against them in a State or Federal court alleging a violation thereof, such judgment must be submitted to the Department. Based on our active and ongoing monitoring of grantees, we have not yet been made aware of any significant issues with grantees resulting in final, non-default judgments that a grantee has failed to comply with the First Amendment in large part because grantees are not required to and do not report such judgments or violations to us. We specifically requested the public submit any evidence of such violations to inform our estimates and did not receive any information about the number of final, non-default judgments against a public institution, holding that the public institution violated the First Amendment, or the number of final, non-default judgments against a private institution, holding that the private institution violated a stated institution policy regarding freedom of speech, including academic freedom.

In addition to our request about compliance with the First Amendment, we specifically asked the public to submit relevant information regarding the likely effects—both economic and non-economic—of these changes. In response to that request, members of the public cited potential economic and non-economic effects of increased discrimination. As discussed elsewhere, we did not find these arguments convincing. Despite the lack of persuasive comments, the Department did review our initial assumptions pursuant to commenters' general concerns and were unable to identify additional likely economic or non-economic impacts. In the absence of additional, specific information regarding the types of impacts commenters believed we failed to consider, we decline to amend our initial assumptions and estimates related to these provisions.

That being said, while we disagree with commenters that the issues they identified should be quantified and included in our analysis of the likely impacts of these final regulations, we do note that our analysis did not include time for grant recipients under 34 CFR parts 75 and 76 to review these final regulations or for a subset of those grantees to engage in a review of their policies as a result of these final rules. We have revised our cost estimates to include these items.

With regard to changes to 34 CFR 106.12(c), which provide greater clarity regarding the statutory exemption in 20 U.S.C. 1681(a)(3) and reflected in 34 CFR 106.12(a), we disagree that there were economic or non-economic impacts, including discrimination, that we failed to consider, or that our analysis was otherwise not meaningful. One commenter alleged that the Department provided no basis on which to substantiate its assumption that this change would not substantially change the number or composition of entities claiming the exemption. However, as noted in the NPRM and this final rule, these changes only clarify and codify in regulations many long-standing practices of the Department. A number of the standards in 34 CFR 106.12(c)(1)–(5) are criteria that have been used by OCR for decades in adjudicating claims to the exemption under 20 U.S.C. 1681(a)(3) and reflected in 34 CFR 106.12(a) and, therefore, it is likely that any entities that contacted the Department about this exemption would have received guidance in accordance with these changes. Informed by public comment, the Department has no information to suggest that a substantial number of educational institutions will be newly eligible to assert a religious exemption under Title IX, where they could not before. We therefore have no evidence to refute and stand by the assumption that these changes would not result in a substantial change in the number or composition of entities asserting the exemption. Further, given that we do not believe that there would be a substantial change in the number or composition of entities asserting the exemption, we have no reason to believe that there would be a substantial increase in the number of individuals affected by the policies and practices of these entities. If an individual feels that the religious exemption under Title IX and these regulations does not apply to an educational institution, that individual may always file a complaint with OCR. Further, if the assertion of the exemption in 34 CFR 106.12(a) were likely to cause the harms cited by commenters, there should be ample evidence of those harms at the entities already asserting the exemption. We do not have evidence that those harms actually occurred, and commenters did not identify any examples of such. If we do not anticipate any change in the number of individuals affected by the policies and practices of these entities to which the religious exemption applies, and we have no evidence to suggest that the policies and practices of these entities actually generate the harms cited by commenters (including, among others, increased rates of intimate partner violence and psychological abuse and lower rates of cervical cancer screenings), we cannot reasonably attach costs associated with those harms to the changes being made herein. We therefore decline to include costs related to discrimination, lack of access to safety net programs, or costs associated with confusion or familiarization with new providers.

With regard to changes to 34 CFR 606.10, 607.10. 608.10, and 609.10, we disagree that there were economic or non-economic impacts, including discrimination, that we failed to consider, or that our analysis was otherwise not meaningful. As noted in the NPRM, these changes would remove language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replace it with language more narrowly defining the limitation. In general, the Department does not estimate costs associated with regulatory changes that only affect the expenditure of Federal funds as all costs associated with compliance are subsidized with Federal grants. At most, such changes could result in transfers across eligible activities or recipients. The Department noted this potential for transfers in the NPRM and specifically requested public feedback on the extent to which these transfers were likely to occur. We received no information from the public on this matter. We therefore retain this as a potential, but unquantified transfer among allowable activities and recipients.

Commenters also asserted potential violations of the Administrative Procedure Act and Executive Orders 12866 and 13563 with respect to additional information they believe the Department should have released to aid them in their review of these estimates,

such as information about grants, grant recipients and effects on small entities. The only non-publicly-available information used in developing those estimates was the Department's active monitoring of our grantees, and the relevant aspects of that information were discussed in the NPRM. We do not believe it would be necessary or appropriate for the Department to release all monitoring records for all grantees, nor would the provision of that information aid commenters in further assessing the reasonableness of our assumptions.

Changes: We have revised our cost estimates to include time for grantees to read the rule and review their institutional policies.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under E.O. 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

Under E.O. 12866, section 3(f)(1), this regulatory action is a significant regulatory action subject to review by OMB.

Under E.O. 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under E.O. 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The final regulations are a significant regulatory action under E.O. 12866, and impose total one-time costs of approximately $297,770. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed these final regulations under E.O. 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, E.O. 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

E.O. 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. While the Department is required to estimate the benefits and costs of every regulation, and has considered those benefits and costs for these final regulations, our decision regarding the final regulations rely on legal and policy considerations discussed elsewhere, and not on the estimated cost likely to result from these final regulations. The approach that the Department chooses upholds the First Amendment to the U.S. Constitution with respect to public institutions of higher education and holds private institutions of higher education accountable to their own stated institutional policies regarding freedom of speech, including academic freedom. The Department's approach with respect to discretionary grant programs under Title III and Title V of the HEA aligns with the most current precedent from the U.S. Supreme Court. The Department also clarifies how educational institutions may demonstrate that they are controlled by a religious organization to qualify for the exemption provided under Title IX, 20 U.S.C. 1681(a)(3), to the extent Title IX or its implementing regulations would not be consistent with the religious tenets of such organization.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, assumptions, limitations, and data sources that we considered.

Need for Regulatory Action

The Department is revising its regulations in response to the United States Supreme Court's decisions in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*[234] and consistent with *Espinoza* v. *Montana Dep't of Revenue*[235] as well as *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,*[236] RFRA, the United States Attorney General's October 6, 2017, Memorandum on Federal Law Protections for Religious Liberty, E.O. 13798 (Promoting Free Speech and Religious Liberty),[237] and E.O. 13831 (Establishment of a White House Faith and Opportunity Initiative). Additionally, the Department is revising its regulations to enforce E.O. 13864,[238] Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.

The Department believes that even a single instance of a violation of the First Amendment at a public institution or a

[234] 137 S. Ct. 2012 (2017).

[235] 140 S. Ct. 2246 (2020).

[236] 140 S. Ct. 2367 (2020).

[237] Att'y Gen. Mem. nn Federal Law Protections for Religious Liberty, Memorandum for All Executive Departments and Agencies (Oct. 6, 2017), *https://www.justice.gov/opa/press-release/file/1001891/download.*

[238] Exec. Order 13864, 84 FR 11401 (Mar. 21, 2019).

single instance of a violation of stated institutional policies regarding freedom of speech, including academic freedom, at a private institution, as adjudicated by a court, is egregious with respect to Federal research or education grants. Such violations deny students the opportunity to learn and also deny teachers and faculty the opportunity to research and engage in rigorous academic discourse. The freedoms in the First Amendment for public institutions and stated institutional policies regarding freedom of speech, including academic freedom, for private institutions are fundamental for education.

Additionally, these final regulations governing the Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program provide consistency with current Supreme Court case law regarding the Free Exercise Clause and RFRA. These final regulations also help ensure that religious student organizations at public institutions do not have to choose between exercising their religion or participating in a publicly available government benefit program.

Finally, the Department for the first time provides clarity through regulations as to how an educational institution may demonstrate that it is controlled by a religious organization such that Title IX and its implementing regulations would not apply pursuant to 20 U.S.C. 1681(a)(3). The Department previously addressed such matters through guidance which does not have the force and effect of law. These final regulations provide a non-exhaustive list of criteria that is consistent with RFRA and that institutions may choose to use in asserting an exemption under 20 U.S.C. 1681(a)(3).

The Department's need for regulatory action is explained more fully in the NPRM in ''Background—Part 1 (Religious Liberty)'' and ''Background—Part 2 (Free inquiry).'' [239]

Discussion of Costs and Benefits

The Department has analyzed the costs and benefits of complying with these final regulations. Due to the number of affected entities and recipients, we cannot estimate, with absolute precision, the likely effects of these regulations. However, as discussed below, we estimate that these final regulations will have a one-time net cost of approximately $297,770.

Discussion of Costs, Benefits, and Transfers

For purposes of these estimates, the Department assumes that approximately 1,500 institutions of higher education are grant recipients under 34 CFR parts 75 and 76. Of those, we assume that approximately 70 percent (1,050) are public institutions and 30 percent (350) are private institutions.[240] We assume that most activities outlined below would be conducted by an attorney at a rate of $102.05 per hour.[241]

We assume that representatives of all 1,500 institutions receiving grants under 34 CFR parts 75 and 76 will review the final rule. We estimate that such review will take, on average, 1 hour per institution for a one-time cost of approximately $209,700. While the Department recognizes that some institutions may take longer to complete this review, we believe many institutions will take far less time, instead relying on high level summaries or overviews, such as those produced by a central office for an entire university system.

34 CFR Part 75—Direct Grant Programs and 34 CFR Part 76—State-Administered Formula Grant Programs

Changes to 34 CFR 75.500 and 34 CFR 76.500 clarify public institutions that are grantees or subgrantees and that *already* are legally required to abide by the First Amendment, must comply with the First Amendment as a material condition of the Department's grant. Similarly, private institutions must comply with their own stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of a grant. These final regulations assume that generally, a public institution makes a good faith effort to comply with this material condition unless a State or Federal court renders a final, non-default judgment against the institution or its employee acting in the employee's official capacity, finding that the public institution or such an employee violated the First Amendment. Similarly, these final regulations assume that generally, a private institution makes a good faith effort to comply with its own stated institutional policies regarding freedom of speech, including academic freedom, unless a State or Federal court renders a final, non-default judgment against the institution or its employee acting on its behalf, finding that the private institution or such an employee violated a stated institutional policy regarding freedom of speech, including academic freedom. These final regulations require grantees to submit to the Department a copy of any final, non-default judgment rendered against them by a State or Federal court, finding a violation of the First Amendment for public institutions or finding a violation of a stated institutional policy regarding freedom of speech, including academic freedom, for private institutions. Additionally, the changes prohibit public institutions of higher education from denying religious student organizations any rights, benefits, or privileges afforded to other student organizations because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Generally, the Department assumes that public institutions, to which the First Amendment already applies, make a good faith effort to comply with the First Amendment. As such, we do not believe the majority of institutions will conduct a review of their policies as a result of this final rule. We assume that approximately 15 percent of public institutions of higher education will review their policies to ensure compliance with the First Amendment. We believe such a review will take approximately four (4) hours. We do not assume a more comprehensive or burdensome review process because, as noted above, public institutions have always been required to comply with the First Amendment, and we assume that public institutions are making a good faith effort to comply. We further assume that no private institutions will conduct such a review given that they are only required to comply with their existing policies. However, to the extent that private institutions do choose to conduct such a review (for instance, to verify their continued support of all previously adopted policies), the costs noted herein will be underestimates of the actual costs generated by these final regulations. We therefore assume that approximately 158 institutions will conduct a review of their policies for a total one-time cost of $88,070.

The Department recognizes that the number of final, non-default judgments holding that a public institution or an employee acting on its behalf has violated the First Amendment is unpredictable and may be infrequent.

[239] 85 FR 3191–99.

[240] Estimates based on analysis of grant awards made by the Department in fiscal year 2018.

[241] Estimates based on a median hourly wage for lawyers employed by colleges, universities, and professional schools, State government owned from the May 2019 National Occupational Employment and Wage Estimates by ownership, published by the Bureau of Labor Statistics (*www.bls.gov/oes/current/611300_2.htm#23–0000*). We have used loaded wage rates, assuming a factor of 2.0 to account for both the employer cost for employee compensation and overhead costs.

While the Department is choosing to take a measured approach in these final regulations in finding a public or private institution in violation of the newly added material conditions in §§ 75.500 and 76.500 only when there is a final, non-default judgment against an institution, we believe these final regulations will have the additional benefit of increasing and incentivizing awareness about the importance of compliance generally. These changes are qualitative in nature and, therefore, we have not quantified them as part of this analysis. We note that individuals may experience a violation of the First Amendment or a stated institutional policy regarding freedom of speech and choose not to file a lawsuit to challenge a public institution or a private institution. A student or employee may risk their education or employment in filing such a lawsuit. They also may fear retaliation from the institution, their peers, their colleagues, or their supervisors. Additionally, many institutions may choose to settle such disputes such that a court never renders a final, non-default judgment. Accordingly, the lack of a final, non-default judgment against an institution does not mean that a public institution has not violated the First Amendment or that a private institution has not violated its own stated institutional policies regarding freedom of speech, including academic freedom. It may mean that the institution remedied any problem before a lawsuit was filed or during any litigation. Remedying such a problem before a final, non-default judgment is rendered saves institutions the cost of litigation, and remedying any such problem during litigation saves the institution the continued cost of litigation.

A final, non-default judgment against a public institution for a violation of the First Amendment or against a private institution for stated institutional policies regarding freedom of speech, including academic freedom, may be rare, but such a judgment may signify that the institution refused to remedy any such problem until a State or Federal court ordered it to do so. The Department believes that a single instance of such a violation is egregious. First Amendment rights at public institutions and freedom of speech, including academic freedom, at private institutions are essential to learning and education. Even one violation may have a detrimental effect on students, faculty, and the educational environment. One such instance may chill students', faculty's, and others' protected speech with respect to the First Amendment at public institutions or permissible speech, including academic freedom, under stated institutional policies. The burden and cost of complying with the First Amendment for public institutions and with stated institutional policies regarding freedom of speech, including academic freedom, for private institutions is a burden and cost that these institutions already must bear. These final regulations do not add any such burden or cost beyond what is discussed above.

To the extent that grantees do have such judgments rendered against them, we believe the cost of submitting a copy to the Department will be negligible. The final rule does not require grantees to submit the information in any particular format or venue, and we believe the requirement could easily and efficiently be addressed by grantees by forwarding a copy of the judgment via email to their project officer. Such an approach likely will take less than thirty minutes to accomplish for an estimated cost of no more than $50 (assuming the work is completed by a lawyer employed by the institution) per submission.

Specifically, regarding the prohibition on denying religious student organizations the rights, benefits, and privileges afforded to other student organizations in §§ 75.500(d) and 76.500(d), we assume no costs associated with ensuring that all student organizations have equal access to generally available resources. To the extent that generally available resources are, as a result of this change, now made available to a wider range of student organizations, this change may result in a small transfer of benefits from existing student organizations to religious student organizations. We believe that the number of student organizations usually operating on each campus likely makes these transfer effects minimal for any given student organization.

As noted above, grantees that are found to be in violation of the First Amendment or their stated institutional policies regarding freedom of speech, including academic freedom, will be considered to be in violation of a material condition of their grant and the Department will consider available remedies for the violation. We do not believe it is likely that such violations, if they do occur, would result in a substantial number of grants being terminated because the Department would first seek to acquire voluntary compliance from the institution with the First Amendment for public institutions or its own stated institutional policies regarding freedom of speech, including academic freedom, for private institutions, or any special conditions that the Department may impose to achieve such compliance. Accordingly, we do not believe it is likely that such violations will result in any large number of grants being terminated. Further, as with all violations of the conditions of a particular grant, decisions regarding appropriate remedies are made on a case-by-case basis, and we therefore cannot reliably estimate the effects on any particular grantee's awards, even if we assume a failure to comply with the First Amendment. Nonetheless, the potential suspension or termination of a Federal award and potential debarment would, in the event that they occurred, represent real costs to grantees. However, as noted above, we believe such outcomes are generally unlikely and difficult to meaningfully predict. We also note that some grantees or subgrantees may, in the event that they face a lawsuit alleging violations of the First Amendment or institutional policies regarding freedom of speech, shift their litigation strategies to avoid final, non-default judgments against them. To the extent that they did so, such actions could result in additional costs to grantees that would not occur in the absence of the rule. However, as noted above, although such violations do occur, we believe they are difficult to predict with certainty and any effect on the litigation strategy of grantees is case-dependent. As such, we continue to estimate negligible costs associated with this provision.

The addition of 34 CFR 75.684 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

Changes to 34 CFR 76.700 add a cross-reference to 34 CFR 76.500. We do not anticipate this change to have any quantifiable cost and may benefit the Department and the general public by improving the clarity of the regulations.

The addition of 34 CFR 76.784 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 106—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Changes to 34 CFR 106.12 help define the term ''controlled by a religious organization'' for purposes of asserting the exemption under 20 U.S.C. 1681(a)(3) and reflected in § 106.12(a). While these changes provide substantial clarity to regulated entities about how to demonstrate that an educational

institution is controlled by a religious organization, the Department does not believe that they substantially change the number or composition of entities asserting the exemption. To the extent that it would, we believe there could be an expansion of previously eligible entities beginning to assert the exemption due to an increased clarity regarding the regulatory standard for doing so. We do not anticipate this change to have any quantifiable cost.

The addition of 34 CFR 106.12(d) clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 606—Developing Hispanic-Serving Institutions Program

Changes to 34 CFR 606.10 removes language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replace it with language more narrowly defining the limitation. The Department also revises the definition of a ''school or department of divinity'' in a manner that is more consistent with the First Amendment and other Federal laws. We do not anticipate these changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. In the NPRM, the Department noted that it had insufficient information available to quantify this potential transfer at that time and requested information from the public to help us do so. The commenters did not provide any such information and therefore, without sufficient information, we retain this as a potential unquantified transfer.

The addition of 34 CFR 606.11 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 607—Strengthening Institutions Program

Changes to 34 CFR 607.10 removes language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replaces it with language more narrowly defining the limitation. The Department also revises the definition of a ''school or department of divinity'' in a manner that is more consistent with the First Amendment and other Federal laws. We do not anticipate these changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. In the NPRM, the Department noted that it had insufficient information available to quantify this potential transfer at that time and requested information from the public to help us do so. The commenters did not provide any such information and we therefore, without sufficient information, we retain this as a potential unquantified transfer.

The addition of 34 CFR 607.11 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 608—Strengthening Historically Black Colleges and Universities Program

Changes to 34 CFR 608.10 removes language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replace it with language more narrowly defining the limitation. The Department also revises the definition of a ''school or department of divinity'' in a manner that is more consistent with the First Amendment and other Federal laws. We do not anticipate these changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. The Department does not have sufficient information to quantify this potential transfer at this time.

The addition of 34 CFR 608.12 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

34 CFR Part 609—Strengthening Historically Black Graduate Institutions Program

Changes to 34 CFR 609.10 removes language that prohibits the use of funds for otherwise allowable activities that merely relate to sectarian instruction or religious worship and replaces it with language more narrowly defining the limitation. The Department also revises the definition of a ''school or department of divinity'' in a manner that is more consistent with the First Amendment and other Federal laws. We do not anticipate these changes to result in any quantifiable costs. However, it is possible that grantees may shift their use of funds to support activities that are currently prohibited under the broader, current limitation. The Department does not have sufficient information to quantify this potential transfer at this time.

The addition of 34 CFR 609.12 clarifies that the provisions of this section are severable. We do not anticipate this change to have any quantifiable cost.

Regulatory Alternatives Considered

The Department considered issuing guidance documents instead of regulations to address the issues discussed in the NPRM, including in ''Part 1—Religious Liberty'' and ''Part 2—Free Inquiry.'' The Department determined that guidance documents would prove insufficient because guidance documents are not binding and do not carry the force and effect of law.[242] To address these issues in a clear and enforceable manner, a formal notice-and-comment rulemaking was the most appropriate approach. It also reinforces our commitment to the rule of law and robust public participation in the development of regulations that govern us.

The Department considered whether the Department, itself, should adjudicate claims alleging that a public institution violated the First Amendment or alleging that a private institution violated its stated institutional policies regarding freedom of speech. The Department decided against this alternative as both State and Federal courts are adequate guardians of the First Amendment and have a well-developed body of case law concerning First Amendment freedoms. Relying on State and Federal courts to make these determinations decreases the administrative burden on the Department. If the Department were to determine whether First Amendment rights were violated, then the Department officials would have to become experts in the panoply of First Amendment issues, including guarding against any establishment of religion, the free exercise of religion, freedom of speech, freedom of association, freedom of petition, freedom of assembly, and freedom of the press. The Department also would have to become familiar with the governing case law regarding each aspect of the First Amendment that applies to the jurisdiction where a public institution is located. Unlike other Federal agencies, such as the Department of Justice, the Department does not routinely enforce or handle matters regarding the First Amendment and would like to rely on the courts for their expertise in such judgments. With respect to private institutions, the Department would have to become familiar with each private institution's stated institutional policies regarding

[242] *Perez,* 575 U.S. at 97,

freedom of speech, including academic freedom, and each discrete issue that may be presented under such policies. State and Federal courts are well equipped to make necessary factual and legal determinations with respect to stated institutional policies regarding freedom of speech, including academic freedom, that private institutions choose to adopt.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the Secretary certifies that these final regulations do not have a significant economic impact on a substantial number of small entities.

The final rule affects all institutions of higher education receiving grants from the Department. In FY 2018, 1,548 IHEs received such awards, totaling approximately $3.3 billion. Approximately 130 of those IHEs qualify as small, receiving approximately $183 million.[243] As described in the *Discussion of Costs and Benefits* section of this notice, the Department estimates that these final regulations will impose one-time costs of approximately $510 per institution that conducts a review of their policies. We do not believe this would represent a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Under the final regulations, a public or private institution must submit to the Secretary a copy of certain final, non-default judgments by a State or Federal court. We believe such a submission will take no longer than 30 minutes per judgment. As discussed in the NPRM and in the Discussion of Costs, Benefits, and Transfers above, we do not estimate 10 or more parties will have such judgments to submit to the Department. Therefore, the Paperwork Reduction Act is not implicated.

Intergovernmental Review

The programs in parts 606, 607, 608, and 609 of title 34 of the Code of Federal Regulations may be affected by these regulations, and these programs, which include the Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and the Strengthening Historically Black Graduate Institutions Program, are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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List of Subjects

34 CFR Part 75

Accounting, Copyright, Education, Grant programs—Education, Inventions and patents, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Private schools, Reporting and recordkeeping requirements, Virgin Islands.

34 CFR Part 106

Education, Sex discrimination, Civil rights, Sexual harassment

34 Part 606

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 607

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 608

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 609

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 75, 76, 106, 606, 607, 608, and 609 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 75.500 is revised to read as follows:

§ 75.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) Each grantee shall comply with the following statutes and regulations:

[243] For purposes of this analysis, the Department defines a small IHE as a two-year institution with 500 FTE or less or a four-year institution with an enrollment of 1,000 FTE or less.

TABLE 1 TO § 75.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

(b)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter ''public institution''), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department's grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each grantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter ''private institution'') must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department's grant. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A grantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 3. Section 75.684 is added to subpart E to read as follows:

§ 75.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 4. Section 75.700 is revised to read as follows:

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee shall comply with § 75.500, applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 5. Section 75.741 is added to subpart F to read as follows:

§ 75.741 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

PART 76—STATE–ADMINISTERED FORMULA GRANT PROGRAMS

■ 6. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 7. Section 76.500 is revised to read as follows:

§ 76.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) A State and a subgrantee shall comply with the following statutes and regulations:

TABLE 1 TO § 76.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	34 CFR part 100.

TABLE 1 TO § 76.500(a)—Continued

Subject	Statute	Regulation
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

(b)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter ''public institution''), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department's grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each State or subgrantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter ''private institution'') must comply with its stated institutional policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom, as a material condition of the Department's grant. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each State or subgrantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department's grant, each State or subgrantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A State or subgrantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 8. Section 76.684 is added to subpart F to read as follows:

§ 76.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 9. Section 76.700 is revised to read as follows:

§ 76.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A State and a subgrantee shall comply with § 76.500, the State plan, applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 10. Section 76.784 is added to subpart I to read as follows:

§ 76.784 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3 and 3474)

PART 106—NON DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 11. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.,* unless otherwise noted.

■ 12. Section 106.12 is amended by adding paragraphs (c) and (d) to read as follows:

§ 106.12 Educational institutions controlled by religious organizations.

* * * * *

(c) *Eligibility.* Any of the following in paragraphs (c)(1) through (6) of this section shall be sufficient to establish that an educational institution is controlled by a religious organization, as contemplated under paragraph (a) of this section, and is therefore eligible to assert a religious exemption to the extent application of this part would not be consistent with its religious tenets:

(1) That the educational institution is a school or department of divinity.

(2) That the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of the organization by which it claims to be controlled.

(3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines

or practices of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

(4) That the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.

(5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

(6) Other evidence sufficient to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3).

(d) *Severability.* If any provision of this section or its application to any person, act, or practice is held invalid, the remainder of this section or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 606—DEVELOPING HISPANIC–SERVING INSTITUTIONS PROGRAM

■ 13. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.,* unless otherwise noted.

■ 14. Section 606.10 is amended by revising paragraphs (c)(3) and (4) to read as follows:

§ 606.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *

(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

§§ 606.11 through 606.13 [Redesignated as §§ 606.12 through 606.14]

■ 15. Sections 606.11 through 606.13 are redesignated as §§ 606.12 through 606.14.

■ 16. New § 606.11 is added to read as follows:

§ 606.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1101 *et seq.*)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

■ 17. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

■ 18. Section 607.10 is amended by revising paragraphs (c)(3) and (4) to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *

(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

§§ 607.11 through 607.13 [Redesignated as §§ 607.12 through 607.14]

■ 19. Redesignate §§ 607.11 through 607.13 as §§ 607.12 through 607.14.

■ 20. New § 607.11 is added to read as follows:

§ 607.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1057 *et seq.*)

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

■ 21. The authority citation for part 608 is revised as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 22. Section 608.10 is amended by revising paragraphs (b)(5) and (6) to read as follows:

§ 608.10 What activities may be carried out under a grant?

* * * * *

(b) * * *

(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

■ 23. Section 608.12 is added to subpart B to read as follows:

§ 608.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

■ 24. The authority citation for part 609 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 25. Section 609.10 is amended by revising paragraphs (b)(5) and (6) to read as follows:

§ 609.10 What activities may be carried out under a grant?

* * * * *

(b) * * *

(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

■ 26. Section 609.12 is added to subpart B to read as follows:

§ 609.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its

provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1

Requirements for Additional Traceability Records for Certain Foods; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2014–N–0053]

RIN 0910–AI44

Requirements for Additional Traceability Records for Certain Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to establish additional traceability recordkeeping requirements for persons that manufacture, process, pack, or hold foods the Agency has designated for inclusion on the Food Traceability List. The proposed rule would require these entities to establish and maintain records containing information on critical tracking events in the supply chain for these designated foods, such as growing, shipping, receiving, creating, and transforming the foods. The proposed requirements are intended to help the Agency rapidly and effectively identify recipients of foods to prevent or mitigate foodborne illness outbreaks and address credible threats of serious adverse health consequences or death resulting from foods being adulterated or misbranded. We are issuing this proposed rule in accordance with the FDA Food Safety Modernization Act (FSMA).

DATES: Submit either electronic or written comments on the proposed rule by January 21, 2021. Submit written comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 by November 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 21, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–0053 for ''Requirements for Additional Traceability Records for Certain Foods.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on the information collection under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this proposed collection is ''Requirements for Additional Traceability Records for Certain Foods.''

FOR FURTHER INFORMATION CONTACT: *Regarding the proposed rule:* Brian Pendleton, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4614, *Brian.Pendleton@fda.hhs.gov.*

Regarding the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose and Coverage of the Proposed Rule

In accordance with section 204(d) of FSMA, this proposed rule would establish traceability recordkeeping requirements for persons who manufacture, process, pack, or hold foods that FDA has designated as foods for which additional recordkeeping requirements are appropriate and necessary to protect the public health. The requirements are intended to help us rapidly and effectively identify recipients of these foods to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death as a result of such foods being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342) or misbranded under section 403(w) of the FD&C Act (21 U.S.C. 343(w)). The proposed requirements would reduce the harm to public health caused by foodborne illness outbreaks and limit adverse impacts on industry sectors affected by these outbreaks by improving the ability to quickly and efficiently trace the movement through the supply chain of foods identified as causing illness, identify and remove contaminated food from the marketplace, and develop mitigation strategies to prevent future contamination.

We are issuing the proposed rule because Congress directed us, in section 204(d)(1) of FSMA, to establish recordkeeping requirements for these foods that would be additional to the traceability recordkeeping requirements in section 414 of the FD&C Act (21 U.S.C. 350c) and FDA regulations in 21 CFR part 1, subpart J (subpart J). The existing requirements in subpart J are designed to enable FDA to identify the immediate previous sources and immediate subsequent recipients of foods to address credible threats of serious adverse health consequences or death to humans or animals. The proposed rule would adopt additional recordkeeping requirements beyond those in subpart J for foods we designate as high-risk foods (including foods that contain foods designated as high risk) in accordance with factors specified by Congress in section 204(d)(2)(A) of FSMA. We will list these designated foods on a ''Food Traceability List,'' a draft of which is available for comments. We will publish a final version of the Food Traceability List on our website when we issue the final rule, and we will update the list as appropriate under the procedures set forth in section 204(d)(2)(B) of FSMA and the proposed rule.

B. Summary of the Major Provisions of the Proposed Rule

We are proposing recordkeeping requirements for foods on the Food Traceability List (''listed foods'') designed to improve the traceability information available for these foods during foodborne illness outbreaks and to increase the speed and precision of traceforward investigations for recall events. The proposed requirements are informed by the challenges we have faced in obtaining critical tracing information and the advancements in traceability approaches that industry has already begun to implement.

The proposed rule would require persons who manufacture, process, pack, or hold foods on the Food Traceability List (including foods that contain foods on the list as ingredients) to keep certain records describing their traceability operations and the listed foods they handle to help FDA investigators understand their traceability procedures and records when reviewing them during a foodborne illness outbreak or a routine inspection. These traceability program records include a description of the reference records (*e.g.,* bills of lading, purchase orders) in which they keep required tracing information, a list of foods on the Food Traceability List they ship, a description of how they assign traceability lot codes, and other information needed to understand their traceability programs.

The core components of the proposed rule are the requirements to establish and maintain records containing key data elements (KDEs) associated with different critical tracking events (CTEs) in a listed food's supply chain, including the growing, receiving, transforming, creating, and shipping of listed foods. The recordkeeping requirements we propose emphasize the importance of documenting the applicable traceability lot codes and linking these codes to other KDEs at critical points in the supply chain of a food to aid product tracing during an investigation of a foodborne illness outbreak or during a recall.

The proposed rule includes several proposed full and partial exemptions from the additional recordkeeping requirements, including some specified by Congress and some we are proposing on our own initiative. Proposed full exemptions include those for small retail food establishments (under one option of a ''co-proposal'' regarding such establishments), small farms, farms selling food directly to consumers, certain food produced and packaged on a farm, food that receives certain types of processing, and transporters of food. Partial exemptions would apply to certain commingled raw agricultural commodities (not including fruits and vegetables subject to the produce safety regulations), fishing vessels, retail food establishments that receive a listed food directly from a farm, and farm to school and farm to institution programs.

The proposed rule also includes special requirements for foods on the Food Traceability List that are subjected to a kill step.

In accordance with section 204 of FSMA, we are proposing to establish procedures under which persons subject to the proposed rule (when finalized) could request modified requirements or an exemption from these recordkeeping regulations for a specific food or a type of entity on the grounds that application of the requirements to that food or type of entity is not necessary to protect public health. In addition, the proposed rule includes procedures for requesting a waiver of one or more of the requirements for an individual entity or a type of entity on the grounds that

having to meet the requirements would impose an economic hardship.

The proposed rule also includes procedures for future updating of the Food Traceability List in accordance with section 204(d)(2)(B) of FSMA.

C. Legal Authority

Section 204(d)(1) of FSMA directs FDA to publish a notice of proposed rulemaking to establish recordkeeping requirements, in addition to the requirements under section 414 of the FD&C Act and the subpart J regulations, for facilities that manufacture, process, pack, or hold foods that FDA designates as foods for which additional recordkeeping requirements are needed under section 204(d)(2) of FSMA. Section 204(d)(2)(A) of FSMA directs FDA to designate foods for which the additional recordkeeping requirements described in section 204(d)(1) of FSMA are appropriate and necessary to protect the public health.

D. Costs and Benefits

This proposed rule, if finalized, would impose compliance costs on affected entities to establish and maintain traceability records for foods on the Food Traceability List and costs to read and understand the rule. Some entities may also incur initial capital investment and training costs. We estimate that the present value of costs of the rule over 10 years, if Option 1 of the co-proposal for retail food establishments with 10 or fewer full-time equivalent employees (full exemption from the rule) were selected, would range from $238 million to $17 billion, with a primary estimate of $2.9 billion in 2018 dollars at a seven percent discount rate, and from $285 million to $20.1 billion, with a primary estimate of $3.4 billion at a three percent discount rate. At a seven percent discount rate, annualized costs of the rule under proposed Option 1 would range from approximately $34 million to $2.4 billion per year in 2018 dollars, with a primary estimate of $411 million per year. At a three percent discount rate, annualized costs under proposed Option 1 would range from approximately $33 million to $2.4 billion per year, with a primary estimate of $400 million per year.

We estimate that the present value of costs of the rule over 10 years, if Option 2 of the co-proposal for retail food establishments with 10 or fewer full-time equivalent employees (exemption from the requirement to make available to FDA, in certain circumstances, an electronic sortable spreadsheet containing requested traceability information) were selected, would range from $301 million to $22.5 billion, with a primary estimate of $3.8 billion in 2018 dollars at a seven percent discount rate, and from $356 million to $26.1 billion, with a primary estimate of $4.4 billion at a three percent discount rate. At a seven percent discount rate, annualized costs of the rule under proposed Option 2 would range from approximately $43 million to $3.2 million per year in 2018 dollars, with a primary estimate of $535 million per year. At a three percent discount rate, annualized costs under proposed Option 2 would range from approximately $42 million to $3.1 billion per year, with a primary estimate of $513 million per year.

The proposed rule, if finalized, would result in public health benefits if it averts foodborne illnesses related to outbreaks linked to foods on the Food Traceability List. It would also improve the likelihood of conducting more targeted recalls and reduce the cost of conducting recalls by avoiding overly broad recalls and market withdrawals. Additional benefits may include increased food supply system efficiencies, such as improvements in supply chain management and inventory control; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions by consumers; and other benefits due to a standardized approach to traceability, including an increase in transparency and trust and potential deterrence of fraud.

We estimate public health benefits using several case studies of outbreak tracebacks for four pathogens associated with illnesses caused by foods on the Food Traceability List. These benefits have a tendency toward underestimation of the total public health benefits because these four pathogens do not represent the total burden of all illnesses associated with listed foods. However, adjustments made for undiagnosed and unattributed illnesses may have the opposite tendency of overstating both illnesses and benefits associated with listed foods. We calculate these monetized benefits from illnesses averted per year based on an estimated 84 percent reduction of traceback time resulting from the requirements of this rule.

Under Option 1 of the co-proposal, for an estimated 84 percent traceback improvement, the annualized monetized benefits range from $33 million to $1.4 billion with a primary estimate of $567 million, discounted at seven percent over ten years. At a three percent discount rate over ten years, the annualized monetized benefits range from $33 million to $1.4 billion with a primary estimate of $580 million. Under Option 2 of the co-proposal, for an estimated 84 percent traceback improvement, the annualized monetized benefits range from $36 million to $1.5 billion with a primary estimate of $626 million, discounted at a seven percent over ten years, and from $37 million to $1.5 billion with a primary estimate of $640 million, discounted at three percent over ten years. Using examples from three recalls, additional (non-health) benefits for both Options 1 and 2 of avoiding overly broad recalls could range from $1.7 billion to $5.6 billion per year at a seven percent discount rate and from $1.7 billion to $5.8 billion using a three percent discount rate. We lack complete information on other benefits described above and discuss them qualitatively.

TABLE 1—COSTS AND BENEFITS

[In 2018 dollars annualized over 10 years at 7 percent discount rate]

	Option 1	Option 2
Total Costs	$411 million	$535 million.
Total Benefits	$567 million in public health benefits for an estimated scenario of 84 percent traceback time improvement. Additional potential benefits that we describe qualitatively include increased food supply system efficiencies; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions; and other efficiencies from a standardized approach to traceability. However, if retail food establishments with 10 or fewer full-time equivalent employees are exempt from subpart S requirements, the timeliness, precision, and accuracy of traceability efforts can be impacted, and qualitative benefits, such as the ability to narrow the number of lots in a recall and the ability for retail food establishments with 10 or fewer full-time equivalent employees to have the data necessary to quickly identify and remove contaminated products from shelves, will be lessened in comparison to Option 2.	$626 million in public health benefits for an estimated scenario of 84 percent traceback time improvement. Additional potential benefits that we describe qualitatively include increased food supply system efficiencies; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions; and other efficiencies from a standardized approach to traceability.

II. Table of Abbreviations and Commonly Used Acronyms in This Document

Abbreviation or acronym	What it means
ASN	Advance shipping notice.
BOL	Bill of lading.
CDC	Centers for Disease Control and Prevention.
CSA	Community supported agriculture.
CTE	Critical tracking event.
FDA	Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FSIS	Food Safety and Inspection Service.
FSMA	FDA Food Safety Modernization Act.
FOIA	Freedom of Information Act.
GAP	Good agricultural practices.
GPS	Global positioning system.
KDE	Key data element.
LACF	Low-acid canned foods.
OMB	Office of Management and Budget.
RAC	Raw agricultural commodity.
USDA	U.S. Department of Agriculture.

III. Background

A. Introduction

On January 4, 2011, President Obama signed the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) into law. As a component of FSMA's overhaul of U.S. food safety law to better ensure the safety and security of the nation's food supply, section 204(d) of FSMA requires that FDA establish recordkeeping requirements for facilities that manufacture, process, pack, or hold foods that the Agency designates as high-risk to facilitate the rapid and effective traceability of such foods. These recordkeeping requirements will be additional to the food traceability requirements under section 414 of the FD&C Act (added to the FD&C Act in title III, subtitle A, section 306, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188)) and the implementing regulations in subpart J of part 1 of title 21 of the Code of Federal Regulations (§§ 1.326 to 1.368) (the subpart J regulations). Congress directed FDA to adopt the subpart J recordkeeping requirements to allow the Agency to identify the immediate previous sources and immediate subsequent recipients of foods (commonly referred to as ''one-up, one-back'' recordkeeping) to address credible threats of serious adverse health consequences or death to humans or animals. In section 204(d)(1) of FSMA, Congress directed FDA to adopt additional recordkeeping requirements to prevent or mitigate foodborne illness outbreaks and address credible threats of serious adverse health consequences or death to humans or animals resulting from foods being adulterated under section 402 of the FD&C Act or misbranded with respect to allergen labeling under section 403(w) of the FD&C Act.

The proposed additional recordkeeping requirements, when finalized, will help FDA follow the movement of listed food products and ingredients both backward and forward throughout the supply chain. Documenting the movement of foods through the supply chain is called product tracing or traceability. In the case of a foodborne illness outbreak or evidence of contaminated food, product tracing helps government agencies identify the points in the food supply chain, including the source of the product, where contamination may have occurred and, working in partnership with industry, subsequently remove the food from the marketplace. It also helps those who sell food to notify those in the distribution chain that they may have received the product. Efficient traceability enables the government and the food industry to take action more quickly, thus preventing illnesses and reducing economic harm.

Traceability includes traceback and traceforward investigations. Traceback begins at the end of the supply chain at the point of purchase or point of service (*e.g.,* grocery stores and restaurants) and follows the food product back through the points of distribution, processing, and production to determine the source of the product and its ingredients. Traceforward follows the movement of a food in the opposite direction, from the source (*e.g.,* a farm or manufacturer) forward to the retail shelf, to determine the scope of a potential recall and the impact of the contaminated product on the public health.

Even before the enactment of FSMA, FDA had been considering ways to improve food product traceability and increase the speed and accuracy of our traceback and traceforward investigations. For example, in 2008 we held two public meetings to discuss mechanisms to enhance product tracing systems for fresh produce and to improve our ability to identify the source of contamination associated with fresh produce-related outbreaks of foodborne illnesses (see 73 FR 55115, September 24, 2008). In the spring of 2009, we engaged in a pilot project with the Institute of Food Technologists (IFT) to conduct a mock traceback scenario on tomatoes with representatives of the

industry, academia, States, and two technology companies (Ref. 1). In December 2009, we conducted a public meeting, in collaboration with the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS), regarding product tracing systems for human food and animal food (see 74 FR 56843, November 3, 2009).

After FSMA was enacted, FDA sought public comment, scientific data, and information in February 2014 to inform our draft approach to identifying high-risk foods (see 79 FR 6596, February 4, 2014). Section 204(d)(2)(A) of FSMA requires FDA to designate high-risk foods for which the proposed additional recordkeeping requirements are appropriate and necessary to protect the public health. The high-risk food designation must be based on the following factors:

- The known safety risks of a particular food, including the history and severity of foodborne illness outbreaks attributed to such food, taking into consideration foodborne illness data collected by the Centers for Disease Control and Prevention (CDC);
- the likelihood that a particular food has a high potential risk for microbiological or chemical contamination or would support the growth of pathogenic microorganisms due to the nature of the food or the processes used to produce the food;
- the point in the manufacturing process of the food where contamination is most likely to occur;
- the likelihood of contamination and steps taken during the manufacturing process to reduce the possibility of contamination;
- the likelihood that consuming a particular food will result in a foodborne illness due to contamination of the food; and
- the likely or known severity, including health and economic impacts, of a foodborne illness attributed to a particular food.

Section 204(d)(2)(B) of FSMA requires the Agency to publish the list of high-risk foods on our website when we issue the final rule establishing the additional recordkeeping requirements for high-risk foods.

B. Need for the Regulation

Each day that a foodborne illness outbreak remains unresolved, the health of consumers remains at risk. We recognize that to fully realize the public health benefits envisioned by FSMA, we need to improve our ability to rapidly identify and trace foods that may be causing illness. While industry has generally adopted the requirements for one-up, one-back tracing required under the subpart J regulations, the complexity and level of implementation of tracing systems that exceed those requirements vary. From our traceback investigations and discussions with food industry companies and organizations, we recognize that many firms have developed traceability procedures for internal use to help ensure the safety of their products and the security of their supply chains. A smaller number of firms employ tracing systems that are more robust and allow linking of incoming and outgoing products throughout the supply chain, primarily through reference to applicable lot codes in records documenting the production, processing, and distribution of the foods. The proposed recordkeeping requirements, which go beyond subpart J, including by mandating such linking information, would reduce the harm to public health caused by foodborne illness outbreaks and limit adverse impacts on industry sectors affected by these outbreaks. The requirements would achieve this by improving the ability to (1) quickly and efficiently trace the movement of listed foods through the supply chain and (2) identify and remove contaminated food from the marketplace during an outbreak.

This proposed rule is intended to establish the framework of information needed to be maintained in traceability records to accurately and efficiently trace contaminated foods (both domestic and imported) across the U.S. food supply chain to protect the health of all consumers. The rule would establish a consistent approach for product tracing for the different types of products and firms subject to this regulation. The rule also specifies the data elements and information firms must establish and maintain, along with information they must send, in certain circumstances, to the next entity in the supply chain. The rule also would help establish a foundation for the use of consistent food tracing terminology, a transition from paper-based recordkeeping to electronic records, and a universal understanding of the critical information needed for a standardized and efficient system for traceability.

Tracing a food back in the supply chain from the point of sale or service to a common source is important for identifying contaminated foods or ingredients and removing those products from the marketplace to prevent additional illnesses. Tracing foods forward can help FDA understand how the distribution of a food product relates to illnesses or illness clusters, especially for outbreaks that are challenging to resolve, such as those involving multiple foods and foods with multiple ingredients.

The Agency has sometimes been unable to determine links between illnesses and specific product distribution due to inconsistent, unstandardized recordkeeping, lack of a deliberate method to connect records, and the frequent lack of lot tracing regarding distribution to specific retail locations. The retail food establishment is the first point in the supply chain where an investigation is initiated to collect traceback data to identify the source of a product. The more accurate and detailed the data available on the product of interest at the retail food establishment, the more refined record collection can be throughout the remainder of the supply chain. In 2018, FDA investigated a cluster of illnesses caused by *Cyclospora cayetanensis* at small restaurants. We were unable to obtain enough information to identify specific farms/growers (from among several suppliers) as the source of the products suspected of contamination (*e.g.,* basil, cilantro, vegetable trays) due to the restaurants' lack of records indicating lot numbers received and lack of linking to information throughout the supply chain. In the absence of more specific data at the retail food establishment, we had to conduct a broader record collection involving numerous suppliers to ensure that we had sufficient tracing information to accurately determine what lots likely would have been available for consumption or purchase at the establishments by the sickened persons. One benefit of the proposed requirements is that they would allow us to conduct comparative analyses on supply chains of multiple commodities to rule in or out specific ingredients in outbreaks in which ill persons have reported concerns about mixed-ingredient foods.

When a foodborne illness outbreak occurs, a firm with an effective traceability program can lessen the potential adverse economic impact of the event. This is possible when the firm can quickly and precisely provide specific traceability information on a suspected product to regulatory agencies. This information can enable the confirmation of common foods and ingredients associated with illnesses and also help determine which foods and ingredients can be potentially eliminated from further consideration as possible sources of contamination. As a result, regulatory agencies can narrow the scope of necessary recall actions, public health alerts, and countrywide import alerts. Furthermore, being able to

identify the source of a contaminated product quickly enables FDA to conduct more timely root-cause analysis, which could provide important information to help in understanding how contamination may have occurred and prevent future outbreaks.

Lack of traceability has led to delays in product recalls and notification to the public, allowing potentially contaminated foods to remain on the market longer. In 2017, the manufacturer of a soy nut butter product recalled the product after it was found to be the source of a multistate outbreak of Shiga toxin-producing *Escherichia coli* (*E. coli*) that sickened 32 people (81 percent of whom were younger than 18) in 12 states (Refs. 2 to 4). Weeks later, another company announced a recall of its products because they were made with soy nut butter supplied by the original company (Ref. 5). Inadequate traceability significantly impeded product actions for potentially contaminated product associated with this outbreak investigation.

Inadequate traceability can affect both traceback and traceforward investigations. In 2015, FDA, CDC, and multiple states investigated a multistate outbreak of *Salmonella* associated with imported cucumbers that ultimately sickened 907 people (Ref. 6). While the traceback was able to identify a single grower of the cucumbers resulting in product recalls, the CDC reported additional sporadic cases of *Salmonella* 6 months after the recall. Having more robust traceforward information could have helped ensure a more complete recall by identifying more locations that received the contaminated product and may have helped assess whether there were other contaminated products on the market subject to the same conditions that led to contamination of cucumbers.

During an outbreak of *Salmonella* Typhimurium in 2008, almost 4,000 peanut butter-containing products were recalled over a period of three and a half months. Cases of illness were first seen in patients residing in a long-term care facility and other institutional settings. Records at these locations identified a common brand of peanut butter, which led to a common manufacturer, and a recall of the brand was initiated. But illnesses continued to be reported across the United States, and further case interviews indicated that the illnesses could not be explained by consumption of the recalled brand of peanut butter. An extensive traceback and traceforward investigation led to expanded recalls over several months, during which many potentially contaminated peanut butter products remained available in the marketplace. This outbreak illustrates the challenges posed by ingredient-based outbreaks and lack of standardized records documenting a product's distribution chain. Manual review of a variety of records was necessary to determine the subsequent commercial recipients of the peanut butter and the inclusion of the peanut butter as an ingredient in other food products. This time-consuming review resulted in a delay in the identification of the many products ultimately recalled in this outbreak (Ref. 7).

Poor traceability records also can lead to an inability to appropriately narrow the scope of a recall. In 2018, a leafy greens mix was linked to an outbreak of Shiga toxin-producing *E. coli.* FDA identified numerous farms that could potentially have produced leafy greens linked to the outbreak. Traceback data gathered during the investigation led to issuance of a public advisory to not consume chopped romaine lettuce from the identified growing region. However, lack of traceability records hindered our ability to identify specific lots and growers of contaminated product. After the initial advisory was issued, we identified an additional cluster of illnesses in people who consumed whole-head romaine lettuce from the same region. As a result, we expanded the initial public advisory to include all romaine lettuce from the identified growing region. Because we were unable to identify a point of origin for the food that made people ill, we were unable to narrow the scope of the advisory but instead had to expand it (Ref. 8).

Lack of specific lot-level tracing data can impact FDA's ability to perform root-cause analyses to determine the point of contamination once the source(s) is identified, which can lead to recurring outbreaks. For example, in 2013, 2014, and 2015, the CDC and state public health officials identified annually recurring outbreaks of *Cyclospora cayetanensis* infections in the United States associated with fresh cilantro from the state of Puebla, Mexico. Although not confirmed by epidemiological means, FDA reviewed a cluster of cyclosporiasis illnesses from 2012 in which the state of Texas had previously identified cilantro as one of multiple possible suspect vehicles. FDA determined that cilantro from Puebla was supplied to the point of service implicated in that outbreak and was one potential source of the outbreak. After the outbreak investigation in 2015, FDA implemented an import alert for shipments of fresh cilantro from Puebla during April through August to align with the seasonality of previous cyclosporiasis outbreaks (Ref. 9). There were numerous traceback challenges during all three of the investigations due to commingling of product, recordkeeping issues, and inconsistencies in documented firm names that hindered our ability to identify the suppliers of the contaminated cilantro. Poor traceability delayed us from taking product actions to ensure contaminated product was removed from the market and conducting environmental assessments that could have identified routes of contamination to reduce future illnesses.

Poor traceability can affect not only outbreaks caused by infectious pathogens but also illnesses associated with fish poisonings. For example, in 2019, FDA investigated a cluster of 50 illnesses that were attributed to Scombrotoxin fish poisoning. In cases of fish toxin poisonings, the illness onset can occur within minutes of consuming fish products, making it even more vital to have specific tracing data available at the point of sale. Because cases reported a variety of frozen tuna products due to inconsistent product descriptions, FDA's traceback investigation traced all cuts of tuna supplied by two firms rather than narrowing the focus to one specific cut of tuna (Ref. 10). The traceback investigation was unable to confirm that the most recent shipments to the points of sale contained the actual product used to prepare meals reported by the cases, due to the extended 2-year shelf life of the frozen product and lack of recordkeeping for this product. Additionally, the traceback investigation could not identify/implicate lot codes at the point of sale because at least two distributors reboxed product into different packaging, and there was potential commingling of product at least one point of sale. Given the extended shelf life and lack of lot codes available at the point of sale, the traceback investigation could not determine relevant lot codes for the implicated products. Due to these traceability limitations, the Agency was only able to place one of the importers of the contaminated tuna products on an import alert, and multiple recalls were required to ensure that importers removed all contaminated products.

Inconsistent product descriptions and commingling of product can also affect traceability efforts. In June 2017, FDA investigated an outbreak of multiple serotypes of *Salmonella* that caused 220 cases of illnesses associated with contaminated papayas (Ref. 11). Tracing the contaminated papayas was delayed by inconsistent descriptions of the papayas, making it difficult to link the

product with the records. Ultimately, the traceback investigation was not able to implicate the shipments of the contaminated papayas due to product commingling, resulting in an inability to differentiate suppliers of the papayas.

As these examples show, while some elements of internal product tracing information are kept by many food producers, manufacturers, distributors, and retailers, the types of information recorded and maintained, the format in which information is kept, the length of time information is retained, and the amount of information shared between trading partners varies among firms. These challenges are further compounded when looking at the traceability of a product moving through multiple entities in a supply chain. Standardization of data elements is needed to help ensure successful traceability throughout the supply chain.

Recognizing the need for improvement in food traceability, when Congress enacted FSMA in 2011 it included provisions, in section 204, intended to enhance tracking and tracing of food. As noted, section 204(d) of FSMA directed FDA to establish additional recordkeeping requirements for certain foods. Under section 204(a) of FSMA, Congress directed us to establish pilot projects in coordination with the food industry to explore and evaluate methods to rapidly and effectively identify recipients of food to prevent or mitigate foodborne illness outbreaks and address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated or misbranded. At FDA's request, the IFT conducted two product tracing pilots (involving mock tracebacks and traceforwards) of foods that had been implicated in foodborne illness outbreaks between 2005 and 2010, assessed the costs and benefits of efficient and effective methods for tracking the foods, and evaluated the feasibility of such methodologies being adopted by different sectors of the food industry. In its 2012 final report to FDA on the pilot studies, the IFT found that pilot participants appeared to have many tools and procedures needed to capture and communicate key traceability information at critical points of product transfer and transformation. However, the IFT identified several problems with current tracing systems, including inconsistencies in terminology and the production of information in formats that cannot be electronically manipulated (Ref. 12).

C. FDA's Current Regulatory Framework

The subpart J traceability recordkeeping requirements stemming from the 2002 Bioterrorism Act require firms to know and record the immediate previous sources of their food products and ingredients and the immediate subsequent recipients of the products they make and/or distribute. The regulations, which we adopted in a final rule issued in 2004 (see 69 FR 71562, December 9, 2004), specify information that ''non-transporters'' of food (persons who own food or who hold, manufacture, process, pack, import, receive, or distribute food for purposes other than transportation) must maintain regarding their receipt and release of food, with more limited requirements for transporters of food. In accordance with section 414(b) of the FD&C Act, the subpart J regulations exempt farms and restaurants from the requirements. Also exempt are retail food establishments that employ ten or fewer full-time equivalent employees.

Since implementation of the subpart J regulations more than 10 years ago, FDA has learned that these one-up, one-back recordkeeping requirements do not capture all the data elements necessary to effectively and rapidly link shipments of food through each point in the supply chain. In many outbreak investigations, we typically request additional information not explicitly required to be maintained under subpart J to help us conduct traceback and traceforward investigations. This additional information often is available because many firms maintain it for business (other than tracing) purposes. However, piecing together information from several types of documents to extract useful tracing data at each point in the supply chain is laborious and time-consuming, significantly slowing the tracing process and potentially putting more consumers at risk.

Among the most significant gaps in the subpart J recordkeeping requirements are the following:

- Lack of coverage of all sectors involved in food production, distribution, and sale (*e.g.,* exemptions for farms and restaurants).
- Lack of uniform data collection (*e.g.,* regarding the source of food ingredients used in each lot of finished product; the requirement to record a lot code or other identifier only ''to the extent this information exists'' (see §§ 1.337(a)(4) and 1.345(a)(4)); and
- Inability to link incoming with outgoing product within a firm and from one point in the supply chain to the next (Ref. 13).

When FDA faces challenges during a traceback investigation, it is often due to one or more of the above-listed gaps in the subpart J requirements. The exemptions for point-of-service firms (foodservice and retail) affect almost every investigation because consumer data often is used to initiate a traceback event. During the investigation of an outbreak of *E. coli* O26 in 2015 at a restaurant, the available consumer data could not identify a single ingredient for tracing because customers who became ill had consumed a variety of dishes with multiple common ingredients. This problem was magnified by the lack of information linking the distribution center to the point of sale.

In the last few years, numerous outbreaks associated with leafy greens have resulted in expansive recalls due to, among other reasons, a lack of uniform data collection across the supply chain. While our traceback activities identified farms that could have supplied affected product during the timeframe of interest for those outbreaks, a lack of data about the source of individual lots restricted our ability to identify which farms actually supplied the contaminated product.

These limitations in the existing tracing recordkeeping requirements have been evident in FDA investigations of foodborne illness outbreaks since the adoption of the subpart J requirements. By including section 204 in FSMA, Congress recognized the need for improvement of food tracking and tracing generally and traceability recordkeeping requirements in particular. In not excluding farms and restaurants from the scope of the additional requirements for high-risk foods, Congress also recognized the importance of ensuring traceability to both ends of the supply chain. The requirements of this proposed rule, when finalized, will help ensure that the food industry maintains the traceability information we have determined is needed to enable us to respond quickly and effectively to foodborne illness outbreaks and recall events.

D. History of the Rulemaking

On February 4, 2014, FDA issued a notice in the **Federal Register** (79 FR 6596) announcing the opening of a docket (FDA–2014–N–0053) to obtain comments and scientific data and information to help us implement section 204(d)(2) of FSMA, which requires us to designate high-risk foods (2014 Notice). The 2014 Notice summarized our tentative draft approach for the review and evaluation of data to designate high-risk foods. We

included as a reference to the notice a draft approach document in which we described the process and methodology we were considering using to designate high-risk foods. We invited interested parties to submit comments, scientific data, and information that would help us refine the draft approach to identifying these foods. In addition to requesting comment and information related to the draft approach to high-risk food designation, we sought information on the following:

- Scientific data and methods that can be used to assess the public health impact of acute or chronic exposures to pathogens and chemical contaminants in food; and
- For representative foods in each food category or commodity group, a list of pathogens and chemical contaminants likely to be found in the food, the percentage prevalence of contaminants in the food, the levels of contaminants in the food, the point in the manufacturing process where contaminants are likely to be introduced, and the typical steps and control measures taken in the manufacturing process to reduce the possibility of contamination of the food with the pathogen or chemical contaminant (79 FR 6596 at 6597).

1. Risk-Ranking Model and Food Traceability List

FDA received many comments in response to the 2014 Notice. Taking into consideration the comments and other information submitted, we developed a draft risk-ranking model and collected data to populate the model for chemical and microbiological hazards associated with specific foods, with technical assistance from external expert panels. We conducted an extensive internal review of the draft model and data with Agency subject-matter experts. Two separate peer-review panels of independent external experts reviewed the draft model and the data used to generate risk scores with the model. Taking into consideration comments from these peer reviews (Refs. 14 and 15), we revised the model and updated the data.

As discussed more fully in FDA's ''Methodological Approach to Developing a Risk-Ranking Model for Food Tracing FSMA Section 204 (21 U.S.C. 2223)'' (Ref. 16), which is available in the public docket for this rulemaking and on our website, the risk-ranking model uses a semiquantitative, multicriteria decision analysis risk-ranking approach. The approach is consistent with the factors set forth in section 204(d)(2) of FSMA and is operationalized with data relevant to those factors, enabling the Agency to rank, on the basis of public health risk criteria, commodity-hazard pairs and, ultimately, foods we regulate.

Although section 204(d) of FSMA does not exclude food for animals, we have not included animal foods in our risk-ranking model. The current risk-ranking model was designed to account only for humans and cannot accommodate applicability to other animal species. A principal reason for this is that one of the criteria used in the risk model is illness data. While human illnesses related to food are tracked by the CDC, there is no Federal agency with the authority or capability to track foodborne illness outbreaks in animals. Although FDA and state animal food regulatory programs have begun efforts to collect data on animal food-related illnesses, there are no requirements for reporting such illnesses, which has led to significant gaps in the data.

Although animal foods are not included in FDA's risk-ranking model, we may revisit the issue of animal foods when we conduct any future reassessments of the model. We welcome comments on whether and how we should consider incorporating animal foods or animal food-related illness into this or a separate model.

Using the results of the risk-ranking model, we tentatively identified foods for which additional traceability records will be required in accordance with section 204 of FSMA (see ''Designation of the Food Traceability List Using the Risk-Ranking Model for Food Tracing'' (Ref. 17). Based on that analysis, and in accordance with section 204(d)(2) of FSMA, following is the tentative list of foods for which additional traceability records would be required under the proposed rule (the Food Traceability List) (Ref. 18):

TABLE 2—TENTATIVE FOOD TRACEABILITY LIST

Food traceability list	Description
Cheeses, other than hard cheeses.	Includes all soft ripened or semi-soft cheeses, and fresh soft cheeses that are made with pasteurized or unpasteurized milk.
Shell eggs	Shell egg means the egg of the domesticated chicken.
Nut butter	Includes all types of tree nut and peanut butters; does not include soy or seed butters.
Cucumbers	Includes all varieties of cucumbers.
Herbs (fresh)	Includes all types of herbs, such as parsley, cilantro, basil.
Leafy greens, including fresh-cut leafy greens.	Includes all types of leafy greens, such as lettuce, (*e.g.,* iceberg, leaf and Romaine lettuces), kale, chicory, watercress, chard, arugula, spinach, pak choi, sorrel, collards, and endive.
Melons	Includes all types of melons, such as cantaloupe, honeydew, and watermelon.
Peppers	Includes all varieties of peppers.
Sprouts	Includes all varieties of sprouts.
Tomatoes	Includes all varieties of tomatoes.
Tropical tree fruits	Includes all types of tropical tree fruit, such as mango, papaya, mamey, guava, lychee, jackfruit, and starfruit.
Fruits and Vegetables (fresh-cut).	Includes all types of fresh-cut fruits and vegetables.
Finfish, including smoked finfish.	Includes all finfish species, such as cod, haddock, Alaska pollack, tuna, mahi mahi, mackerel, grouper, barracuda, and salmon; except does not include siluriformes fish, such as catfish.
Crustaceans	Includes all crustacean species, such as shrimp, crab, lobster, and crayfish.
Mollusks, bivalves	Includes all species of bivalve mollusks, such as oysters, clams, and mussels; does not include scallop adductor muscle.
Ready-to-eat deli salads	Includes all types of ready-to-eat deli salads, such as egg salad, potato salad, pasta salad, and seafood salad; does not include meat salads.

We note that, as discussed in section V.A, the proposed traceability recordkeeping requirements would apply not only to foods specifically appearing on the Food Traceability List

but also to foods that contain foods on the list as ingredients.

A proposed Food Traceability List, including descriptions of the foods on the list (referred to in this document as ''listed foods''), is available in the public docket for this rulemaking and on FDA's website. In accordance with section 204(d)(2)(B) of FSMA, when we issue the final rule, we will publish a finalized Food Traceability List on our website. That list might differ from the list we are publishing with this proposed rule. We also note that, as discussed in section V.K, we anticipate periodically conducting a review to determine whether it is appropriate to revise the Food Traceability List in accordance with the procedures set forth in the proposed rule.

2. Proposed Recordkeeping Requirements for Foods on the Food Traceability List

To help us develop appropriate traceability recordkeeping requirements under section 204(d) of FSMA, we have met with stakeholders and reviewed the current state of food traceability standards, systems, and technologies. We considered a broad range of domestic and international tracing standards and approaches, including those of the IFT, the business global standards organization GS1, the Produce Traceability Initiative, the International Standards Organization, the Global Food Safety Initiative, and others. We researched standards and systems for traceability in effect in several regions and countries, including the European Union, Canada, Australia, Japan, and China. We also discussed traceability approaches and concerns with food industry and consumer groups (Ref. 19). In addition, we have taken into account our experiences and challenges in conducting investigations in response to outbreaks of foodborne illness and recall events.

From our traceback investigations and discussions with food industry companies and organizations, we recognize that most firms have developed and use some traceability procedures. For those firms that have traceability processes, it appears that an increasingly common approach to traceability involves the identification of CTEs for which KDEs are recorded and maintained. One of the IFT's recommendations in its 2012 final report was that FDA require firms to identify and maintain records of CTEs and KDEs as determined by the Agency (Ref. 12). While not all firms at all points in the supply chain employ KDE/CTE-specific tracing tools and procedures, those that do are recognizing the benefits both to their businesses and to public health of adopting such an approach to product tracing recordkeeping (Ref. 20). However, the KDEs/CTEs the food industry uses are not consistently implemented across supply chains. Further, many firms have not adopted updated traceability approaches and are awaiting further agreement on standard KDEs and CTEs to be used throughout the food industry.

As discussed in more detail in section V.E, the proposed rule adopts an approach to recordkeeping for foods on the Food Traceability List focused on maintaining and sharing specific KDEs for certain CTEs in a food's supply chain, which aligns with consensus standards for traceability currently used by industry. The information required to be kept would vary depending on the type of supply chain activity, such as the growing, receiving, transforming, creating, and shipping of listed foods. We believe that the proposed rule will align the tracing information for foods on the Food Traceability List with our need to quickly and effectively respond to foodborne illness outbreaks and other contamination events associated with these foods.

E. Improving Traceability for All Foods

Ideally, a robust traceability system would provide for traceability of all foods, not just foods on the Food Traceability List. Regardless of the type of food that is the subject of a foodborne illness outbreak investigation, sufficient traceability information is needed to identify the source of an outbreak, expedite the removal of contaminated food from the marketplace, and prevent additional consumer exposures. Although section 204 of FSMA limits recordkeeping requirements to foods on the Food Traceability List, the types of records required to be maintained under the proposed rule could be used by entities in the supply chains of all foods to improve traceability.

The tracing information required to be kept under the proposed rule is consistent with information FDA typically requests during an outbreak investigation, regardless of the food commodity. Firms that maintain records containing this information can help FDA more quickly trace the movement of products through the supply chain, identify the source of contamination, and reduce harm to consumers posed by tainted food. By facilitating faster and more accurate identification of contaminated foods, the availability of such records can help narrow the scope of an outbreak investigation and limit the adverse impact of an outbreak on affected sectors of the food industry. In addition, maintaining records in accordance with the proposed requirements would help ensure that a firm is well-prepared if a food the firm produces or distributes is added to the Food Traceability List as a result of a future reassessment of the list.

Of particular importance to an effective food traceability system under the proposed rule is the use of lot codes in documenting CTEs. Tracebacks are most efficient when point-of-service entities can provide investigators with as much information as possible about the origination of the food. If a point-of-service entity can provide lot codes and other relevant information for suspect foods, including the originating farm or firm, FDA investigators can more quickly identify the potential common source of an outbreak and take regulatory action. Tracing the lot information associated with suspect products can narrow the scope of an investigation, provide FDA with information to quickly go directly to the person that created the lot, and limit further illnesses by enabling more rapid removal of contaminated food from the marketplace. Lot code information can also allow investigators to more quickly determine which products are outside the scope of the investigation, reducing the likelihood of unnecessary category-wide recalls.

Although the proposed rule does not require the use of electronic records and electronic communications for traceability (except to aid FDA's review of records during investigations of foodborne illness outbreaks), we encourage all segments of the food industry to incorporate electronic recordkeeping and communication procedures into their traceability programs. Keeping records of KDEs in electronic, rather than paper, form and sharing tracing information electronically with others in the supply chain can greatly facilitate the analysis of information during investigations into foodborne illness outbreaks and speed the completion of traceback and traceforward operations. Sharing of standard KDEs electronically allows all entities in the supply chain access to reliable information on the traceability of a product.

Further, while this proposed rule would not require retail establishments to maintain KDEs for consumer purchases, we support efforts by retailers to identify and provide anonymized consumer purchase data for outbreak investigations. Presently, we rely on date ranges to identify potentially contaminated products purchased by consumers. Access to

traceability lot codes and product identifiers at the consumer level would further enhance our ability to focus on specific products purchased and narrow the scope of implicated shipments.

To realize the full benefits of end-to-end traceability, although the proposed rule applies only to foods on the Food Traceability List, we encourage all firms involved in food production, distribution, and sale to consumers to adopt the recordkeeping practices set forth in the proposed rule for all the foods they manufacture, process, pack, and hold. Consistent with FDA's ''New Era of Smarter Food Safety'' initiative (Ref. 21), we will pursue ways to help all supply chain entities adopt practices and technologies that will promote rapid and effective tracking and tracing of foods to prevent or mitigate foodborne illness outbreaks. The New Era of Smarter Food Safety is FDA's FSMA-based, technology-enabled, strategic initiative for modernizing food safety. Comments provided during and after the October 29, 2019, public meeting on the New Era initiative indicated a strong desire for FDA to specify required CTEs and KDEs to enable interoperability of tracing procedures among all stakeholders. The proposed rule defines the minimum CTEs and KDEs necessary for achieving the goal of improving food safety and will provide the food industry with the framework and language for communicating tracing information throughout the supply chain.

IV. Legal Authority

Under section 204(d) of FSMA, in order to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act, FDA is required to issue regulations to establish recordkeeping requirements, in addition to the requirements under section 414 of the FD&C Act and the subpart J regulations (or any successor regulations), for facilities that manufacture, process, pack, or hold foods that FDA designates under section 204(d)(2) of FSMA as high-risk foods.

We are proposing these regulations under the following authorities:

- Section 204 of FSMA, the specific provisions of which are discussed in the remainder of this section;
- section 701(a) of the FD&C Act (21 U.S.C. 371(a)), which provides FDA with the authority to promulgate regulations for the efficient enforcement of the FD&C Act; and
- sections 311, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 243, 264, and 271), which relate to communicable disease, including by providing FDA with authority to make and enforce such regulations as in FDA's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession (see section 361(a) of the PHS Act).

A. Designation of High-Risk Foods

Section 204(d)(2) of FSMA directs FDA to designate high-risk foods for which the additional recordkeeping requirements promulgated under the authority of FSMA section 204(d)(1) are appropriate and necessary to protect the public health. Each such designation is to be based on the factors enumerated in section 204(d)(2)(A), which are listed in section III.A of this document.

To assist with the fulfillment of this requirement, we developed a semi-quantitative risk-ranking model that utilizes multiple data sources to score commodity-hazard pairs according to a set of criteria that address the factors set out in section 204(d)(2)(A) of FSMA. This model is explained in greater detail in Reference 16 of this document. Foods were included on the list of foods FDA has tentatively designated as high-risk (the ''Food Traceability List'') based on the strength of the criteria scores that the model produced (Ref. 16).

FSMA section 204(d)(2)(B) provides that the list of foods designated under section 204(d)(2)(A) (*i.e.,* the Food Traceability List) shall be published on FDA's website at the time of publication of the final rule that creates the recordkeeping requirements described in section 204(d)(1). Proposed § 1.1300 would provide for such publication. FSMA section 204(d)(2)(B) further states that FDA may update the list to designate new foods or to remove foods that are no longer deemed necessary for inclusion, provided that each such update to the list is consistent with the requirements of FSMA section 204(d) and provided that notice of the update is published in the **Federal Register**. The procedures for updating the list that are set forth in proposed § 1.1465 would address this requirement.

B. Additional Recordkeeping Requirements

Section 204(d)(1)(A)–(M) of FSMA provides both general and specific guidelines that FDA must follow in creating the additional recordkeeping requirements that are mandated by section 204(d)(1). These include the following:

- The requirement that these proposed regulations not require the creation and maintenance of duplicate records where the information is contained in other company records kept in the normal course of business (section 204(d)(1)(E)), which is addressed in proposed § 1.1455(e);
- the requirement that persons subject to these regulations be allowed to maintain the required records at a central or reasonably accessible location provided that such records can be made available to FDA not later than 24 hours after we request them (section 204(d)(1)(H)), which is addressed in proposed § 1.1455(b)(2);
- the requirement to include a process by which FDA may issue a waiver of the recordkeeping requirements if we determine that such requirements would result in an economic hardship for an individual facility or a type of facility (section 204(d)(1)(I)), which is addressed in proposed §§ 1.1405 through 1.1450; and
- the requirement to include a process by which FDA may remove a high-risk food designation developed under section 204(d)(2) for a food or type of food (section 204(d)(1)(M)), which is addressed in proposed § 1.1465.

Furthermore, section 204(d)(5) of FSMA provides that FDA may require that a facility retain records for not more than 2 years, taking into consideration the risk of spoilage, loss of value, or loss of palatability of the applicable food when determining the appropriate timeframes; this is addressed in proposed § 1.1455(c).

Section 204(d)(6) of FSMA places a number of limitations on the requirements that FDA can impose, including limitations relating to the following:

- Farm to school or farm to institution programs (section 204(d)(6)(A)), which are addressed in proposed § 1.1305(i);
- identity-preserved labels with respect to farm sales of food that is produced and packaged on a farm (section 204(d)(6)(B)), which are addressed in proposed § 1.1305(c);
- fishing vessels (section 204(d)(6)(C)), which are addressed in proposed § 1.1305(j);
- commingled raw agricultural commodities (RACs) (section 204(d)(6)(D)), which are addressed in proposed § 1.1305(e); and
- the sale of a food directly from the farm that produced it to a grocery store

or consumer (sections 204(d)(6)(G)–(I)), which are addressed in proposed § 1.1305(h) and (b), respectively.

In addition, section 204(d)(6)(E) of FSMA states the conditions under which FDA may modify the additional recordkeeping requirements or exempt a food or type of facility from those requirements. This process is addressed in proposed §§ 1.1360 through 1.1400. Section 204(d)(6)(F) of FSMA sets forth limited requirements for a person or food who receives such a modification or exemption, as well as limited requirements for any person or food to which a limitation or exemption applies under the provisions relating to fishing vessels and commingled RACs. These limited requirements are included in the proposed provisions that would implement FSMA sections 204(d)(6)(C) through (E).

In addition to the limitations prescribed by Congress, we have identified certain persons or foods that we have tentatively concluded should not be covered by the rule. These include the following:

- Certain small originators of food, as described in proposed § 1.1305(a);
- foods that receive certain types of processing, as described in proposed § 1.1305(d);
- produce that is rarely consumed raw, as described in proposed § 1.1305(e);
- transporters of food, as described in proposed § 1.1305(k);
- nonprofit food establishments, as described in proposed § 1.1305(l);
- persons who manufacture, process, pack, or hold food for personal consumption, as described in proposed § 1.1305(m); and
- certain persons who hold food on behalf of individual consumers, as described in proposed § 1.1305(n).

In addition, we are proposing (in § 1.1305(h)) to extend section 204(d)(6)(G) of FSMA's partial exemption for grocery stores (with respect to food they purchase directly from a farm) to all retail food establishments.

To effectuate and efficiently enforce section 204 of FSMA, we are proposing several requirements for entities that are covered by the proposed rule. In accordance with FSMA section 204(d)(1), proposed § 1.1300 provides that, except as specified otherwise, these requirements would apply to persons who manufacture, process, pack, or hold foods on the Food Traceability List. The proposed requirements are as follows:

- Proposed requirements to establish and maintain certain traceability program records (proposed § 1.1315);
- proposed requirements related to the establishment of traceability lot codes (proposed § 1.1320); proposed requirements for those who grow, receive, transform, create, or ship foods on the Food Traceability List (proposed §§ 1.1325 through 1.1350); proposed special requirements related to the application of a kill step (proposed § 1.1355); and proposed requirements relating to records maintenance and availability (proposed § 1.1455). These proposed requirements would address Congress's directive to create additional recordkeeping requirements for foods of the Food Traceability List.
- proposed requirements for when a traceability lot code must be established and when it cannot be established (proposed §§ 1.1320 and 1.1330(c)), which would help ensure that this key data element serves its intended function with respect to traceability, as discussed in sections V.D.1 to V.D.2.
- proposed requirements for those who ship a food on the Food Traceability List to send records containing certain information to the immediate subsequent recipient (other than a transporter) of the food (proposed § 1.1350(b)), which would help ensure that the recipient of the food has the information they would be required to maintain under the proposed rule.
- proposed requirements related to record availability (proposed § 1.1455(b)), which would help ensure that FDA has access to the required records in the event of an outbreak or other threat to the public health, and which would also assist FDA in ensuring compliance with these regulations and in identifying any violations.

The definitions we are proposing in proposed § 1.1310 would provide a common terminology, which would help all parties as they implement the proposed recordkeeping requirements. The consequences of a failure to comply with the recordkeeping requirements established under section 204 of FSMA were set forth by Congress in section 204(j)(1) and (2), which amended sections 301(e) and 801(a) of the FD&C Act (21 U.S.C. 331(e) and 381(a)), respectively. These consequences are reiterated in proposed § 1.1460.

V. Description of the Proposed Rule

We are proposing to establish additional traceability recordkeeping requirements for persons who manufacture, process, pack, or hold foods we have designated as requiring additional traceability records under section 204(d) of FSMA. Because we propose to establish these new requirements in a new subpart S to part 1 of the FDA regulations, we refer to the proposed requirements as ''the subpart S regulations.''

A. Scope/Applicability (Proposed § 1.1300)

Proposed § 1.1300 answers the question, ''Who is subject to this subpart?'' Proposed § 1.1300 would provide that, except as specified otherwise in subpart S, the proposed regulations would apply to persons who manufacture, process, pack, or hold foods that appear on the list of foods for which additional traceability records are required in accordance with section 204(d)(2) of FSMA (the ''Food Traceability List''). Proposed § 1.1300 also states that we will publish the Food Traceability List on our website in accordance with section 204(d)(2)(B) of FSMA.

Although section 204(d)(1) of FSMA refers to ''facilities'' that manufacture, process, pack, or hold food, we propose that the rule would apply to ''persons'' that manufacture, process, pack, or hold food to avoid possible confusion with other uses of the term ''facilities'' in other FDA food regulations. For example, regulations such as those on preventive controls for human food (21 CFR part 117), preventive controls for animal food (21 CFR part 507), and foreign supplier verification programs (21 CFR part 1, subpart L) define ''facility'' in part as a domestic or foreign entity that is required to register with FDA under section 415 of the FD&C Act (21 U.S.C. 350d). It is clear that Congress intended that these proposed recordkeeping requirements would apply to some persons that are not required to register with FDA, such as grocery stores (see section 204(d)(6)(G) of FSMA), which do not have to register with FDA under section 415 of the FD&C Act due to the exemption for retail food establishments in § 1.226(c). Consequently, we propose that these regulations apply to ''persons'' who manufacture, process, pack, or hold food, rather than ''facilities,'' to avoid possible confusion with other uses of the term ''facility.'' The term ''person,'' as defined in section 201(e) of the FD&C Act (21 U.S.C. 321(e)) and proposed § 1.1310, includes an individual, partnership, corporation, and association.

In accordance with section 204(d)(1) of FSMA, the proposed recordkeeping requirements would apply to persons that ''manufacture, process, pack, or hold'' foods on the Food Traceability List. We note that this differs from the scope of section 414(b) of the FD&C Act and the subpart J requirements, which apply to persons (excluding farms and

restaurants) who manufacture, process, pack, transport, distribute, receive, hold, or import food. Unlike section 414 of the FD&C Act, section 204 of FSMA does not explicitly apply to persons who transport, distribute, receive, or import food. However, with respect to importation, section 204(j)(2) of FSMA (codified in section 801(a)(4) of the FD&C Act) authorizes FDA to refuse admission to foods for which the recordkeeping requirements under section 204 of FSMA have not been complied with. As discussed more fully in section V.C., we believe that many, but not all, persons who transport, distribute, receive, or import food also ''hold'' food, as we propose to define holding.

We propose that the additional recordkeeping requirements in subpart S would apply not only to persons who manufacture, process, pack, or hold foods specified on the Food Traceability List, but also to persons who manufacture, process, pack, or hold foods that contain foods on that list as ingredients. We identified foods on the Food Traceability List based on the factors that Congress provided in section 204(d)(2) of FSMA. The potential risk associated with these foods are not diminished when the foods are used as ingredients in other food products (absent application of a kill step). However, it would be unwieldy and impractical for the Food Traceability List to specify every food product of this sort, *i.e.,* food products whose risk derives from their having a listed food as an ingredient. Nonetheless, foods that contain foods on the Food Traceability List as ingredients would be considered part of the list, as stated in the definition of the list in proposed § 1.1310. If the proposed recordkeeping requirements did not apply to foods containing an ingredient that is on the Food Traceability List, it would be much more difficult for the Agency to quickly identify and remove common lots of such an ingredient when investigating a foodborne illness outbreak believed to be linked to the ingredient. A multi-ingredient food that contains a food on the Food Traceability List as an ingredient (*e.g.,* a pre-made sandwich containing leafy greens) may be a signal triggering an outbreak investigation that ultimately leads to identification of the contaminated ingredient. For these reasons, the proposed recordkeeping requirements would apply not only to specifically listed foods but also to foods that contain listed foods as ingredients. In proposed § 1.1310, we propose to define ''Food Traceability List'' to include both the foods specifically listed and foods that contain foods on the list as ingredients. We use the term in this way for the remainder of this preamble.

B. Exemptions (Proposed § 1.1305)

Proposed § 1.1305 answers the question, ''What foods and persons are exempt from this subpart?'' We propose to create exemptions from the traceability recordkeeping requirements in proposed subpart S for certain types of food and certain types of persons who manufacture, process, pack, or hold foods on the Food Traceability List. Some of the proposed exemptions are specified in section 204 of FSMA, while others reflect our thinking that applying the proposed requirements to certain persons or foods is not appropriate at this time for the reasons discussed later in this document.

1. Exemption for Certain Types of Small Originators (Proposed § 1.1305(a))

On our own initiative, we propose to exempt from the proposed traceability recordkeeping requirements certain types of small or very small farms and other originators of food (*i.e.,* persons who grow, raise, or catch food or who harvest a non-produce commodity). These firms include very small produce farms, small producers of shell eggs, and other small originators of food. Given the relatively low volume of food produced by these entities, and the fact that subsequent parties in the supply chain will be required to maintain records regarding the food produced by these entities, covering these small originators would produce little measurable public health benefit.

a. Farms That Have No More Than $25,000 in Annual Sales of Produce

Proposed § 1.1305(a)(1) would provide that subpart S would not apply to farms or the farm activities of farm mixed-type facilities with respect to the produce (as defined in 21 CFR 112.3 (§ 112.3) in the produce safety regulations) (21 CFR part 112) they grow, when the farm is not a covered farm under the produce safety regulations in accordance with § 112.4(a). The farms addressed in § 112.4(a) have no more than $25,000 in annual sales of produce.

b. Certain Producers of Shell Eggs

Proposed § 1.1305(a)(2) would provide that subpart S would not apply to shell egg producers with fewer than 3,000 laying hens at a particular farm, with respect to the shell eggs produced at that farm. This designation of small shell egg producers as those with fewer than 3,000 laying hens is consistent with the regulations on shell egg production, storage, and transportation (see 21 CFR 118.1(a) (§ 118.1(a))) and other FDA food safety regulations (*e.g.,* foreign supplier verification program regulations (see 21 CFR 1.512(a)(2)(iii))).

c. Certain Other Originators of Food

Proposed § 1.1305(a)(3) would provide that subpart S would not apply to originators of food with an average annual monetary value of food sold during the previous 3-year period of no more than $25,000 (on a rolling basis), adjusted for inflation using 2019 as the baseline year for calculating the adjustment. This exemption would apply to, for example, small aquaculture farms and small farms that grow non-produce foods that may be on the Food Traceability List in the future.

2. Exemption for Farms Regarding Food Sold Directly to Consumers (Proposed § 1.1305(b))

Consistent with section 204(d)(6)(H) and (I) of FSMA, we propose to exempt farms from the proposed traceability recordkeeping requirements with respect to food produced on the farm (including food that is also packaged on the farm) when the owner, operator, or agent in charge of the farm sells the food directly to a consumer (proposed § 1.1305(b)). This means that if the owner, operator, or agent in charge of a farm sells food that is produced (or both produced and packaged) on the farm directly to a consumer, the farm would not be subject to the proposed subpart S requirements with respect to that food (*e.g.,* recordkeeping requirements applicable to food growers). These direct-to-consumer sales by farms would include applicable sales at farmers' markets, roadside stands, over the internet, and through community-supported agriculture programs.

3. Inapplicability to Certain Food Produced and Packaged on a Farm (Proposed § 1.1305(c))

In addition to the farm-related exemptions in proposed § 1.1305(a) and (b), proposed § 1.1305(c) would provide, consistent with section 204(d)(6)(B) of FSMA, that the proposed traceability recordkeeping requirements would not apply to food produced and packaged on a farm, provided that:

- The packaging of the food remains in place until the food reaches the consumer, and such packaging maintains the integrity of the product and prevents subsequent contamination or alteration of the product (proposed § 1.1305(c)(1)); and
- the labeling of the food that reaches the consumer includes the name,

complete address (street address, town, State, country, and zip or other postal code for a domestic farm and comparable information for a foreign farm), and business phone number of the farm on which the food was produced and packaged (proposed § 1.1305(c)(2)).

In accordance with section 204(d)(6)(B) of FSMA, upon request we would waive the requirement for the farm to include a business phone number, as appropriate, to accommodate a religious belief of the individual in charge of the farm (proposed § 1.1305(c)(2)).

Examples of foods that might be exempt under proposed § 1.1305(c), provided the specified packaging and labeling requirements were met, include the following:

- Iceberg whole head lettuce that is harvested and packaged for the consumer in the field with individual non-vented cellophane wrapping that maintains the integrity of the lettuce and prevents subsequent contamination or alteration; and
- English cucumbers individually wrapped for the consumer by a farm in sealed plastic that maintains the integrity of the cucumbers and prevents subsequent contamination or alteration.

However, produce packed or packaged in containers such as clamshells with holes, cardboard boxes, vented crates, plastic bags with holes, or netted bags would not be eligible for this exemption from the subpart S requirements because such packaging does not necessarily maintain the product's integrity and prevent subsequent contamination and alteration.

We note that, consistent with section 204(d)(6)(B) of FSMA, the exemption in proposed § 1.1305(c) would only apply if, among other things, the labeling of the food that reaches the consumer includes the farm's complete address, including the street address, town, State, country, and zip or other postal code for a domestic farm and comparable information for a foreign farm. However, we recognize that not all farms have a street address. In the event that a farm without a street address wanted to rely on this proposed exemption for certain food produced and packaged on that farm, the farm could substitute its geographical coordinates for a traditional street address in the labeling of the food that reaches the consumer.

While the statute requires this exemption, we encourage retail food establishments to keep records on foods covered under the exemption as a best practice because packaging is often discarded by consumers, resulting in loss of information identifying the farm. We recommend that retail food establishments maintain records on the receipt of the produce including the date of receipt and the name, complete address (street address, town, State, country, and zip or other postal code), and business phone number of the farm on which the food was produced and packaged.

4. Inapplicability to Foods That Receive Certain Types of Processing (Proposed § 1.1305(d))

On our own initiative, we propose to exempt from the proposed traceability recordkeeping requirements produce and shell eggs that receive certain types of processing. Under proposed § 1.1305(d)(1), subpart S would not apply to produce that receives commercial processing that adequately reduces the presence of microorganisms of public health significance, provided the conditions set forth in § 112.2(b) in the produce safety regulations are met for the produce. We believe that because of the lesser risk to public health posed by this produce (as reflected in its being exempt from almost all of the requirements of the produce safety regulations), it is not necessary to apply the additional recordkeeping requirements to this food. This proposed exemption would apply to all persons who manufacture, process, pack, or hold such produce, not just the farms that grow it. This means that no persons handling produce that receives the commercial processing exemption in accordance with § 112.2(b) would be required to keep subpart S records for the produce.

Similarly, subpart S would not apply to shell eggs when all the eggs produced at a particular farm receive a treatment (as defined in 21 CFR 118.3 (§ 118.3)) in accordance with § 118.1(a)(2). Section 118.3 of the shell egg regulations (21 CFR part 118) defines ''treatment'' as a technology or process that achieves at least a 5-log destruction of *Salmonella* Enteritidis for shell eggs, or the processing of egg products in accordance with the Egg Products Inspection Act. Under § 118.1(a)(2), if all shell eggs produced at a particular farm receive a treatment, the producer must comply only with the refrigeration requirements in § 118.4(e) for production of eggs on that farm and with the registration requirements in § 118.11. We believe that the lesser risk to public health posed by shell eggs that have received this treatment in accordance with § 118.1(a)(2) makes it unnecessary to apply the subpart S requirements to these eggs.

5. Exemption for Produce That Is Rarely Consumed Raw (Proposed § 1.1305(e))

On our own initiative, we propose to exempt from the proposed traceability recordkeeping requirements produce that is listed as ''rarely consumed raw'' in § 112.2(a)(1) in the produce safety regulations. We believe that because of the lesser risk to public health posed by this produce (as reflected in its being exempt from the produce safety regulations), it is not necessary to apply the additional recordkeeping requirements to these foods.

6. Partial Exemption of Commingled Raw Agricultural Commodities (Proposed § 1.1305(f))

Proposed § 1.1305(f)(1) would provide that, except as specified in proposed § 1.1305(f)(2), subpart S would not apply to commingled RACs, in accordance with section 204(d)(6)(D) of FSMA. Consistent with section 204(d)(6)(D) of FSMA, we propose to define ''commingled raw agricultural commodity'' for the purposes of this exemption as any commodity that is combined or mixed after harvesting but before processing, except that the term ''commingled raw agricultural commodity'' would not include types of fruits and vegetables that are RACs to which the standards for the growing, harvesting, packing, and holding of produce for human consumption in part 112 apply (proposed § 1.305(e)(1)). As a result, the proposed exemption would *not* apply to produce subject to the produce safety regulations.

For the purpose of the definition of ''commingled raw agricultural commodity,'' a commodity would be regarded as ''combined or mixed . . . before processing'' only when the combination or mixing involves food from different farms (proposed § 1.1305(f)(1)). We believe this clarification is appropriate because most of the traceability challenges associated with commingling of food from different farms are less present (or entirely absent) when food from different parts of a single farm is commingled.

In keeping with section 204(d)(6)(D)(ii)(III) of FSMA, the term ''processing'' as used in the definition of commingled RAC would mean operations that alter the general state of the commodity, such as canning, cooking, freezing, dehydration, milling, grinding, pasteurization, or homogenization (proposed § 1.1305(f)(1)).

An example of a RAC that would be exempt from the proposed traceability recordkeeping requirements when they are commingled is shell eggs. For the

purposes of this rule, we would consider commingled shell eggs to be eggs from separate farms under different company management that are physically mixed before packing. Packed eggs that are from a single farm or from separate farms under the same management would not be considered commingled shell eggs. Shell eggs are the only commingled RAC (as defined in proposed § 1.1305(f)(1)) on the current proposed Food Traceability List. Although the limited exemption for commingled RACs in § 1.1305(f) applies to commingled shell eggs, we nevertheless encourage shell egg producers to keep records on the commingling of eggs as a transformation event to help ensure that we are able to determine the source of contaminated eggs in a foodborne illness outbreak or recall event.

Notwithstanding this proposed exemption from the subpart S requirements for commingled RACs, and in accordance with section 204(d)(6)(D) and (F) of FSMA, proposed § 1.1305(f)(2) would specify that, with respect to a commingled RAC that receives the exemption in proposed § 1.1305(f)(1), if a person manufactures, processes, packs, or holds a commingled RAC and is required to register with FDA under section 415 of the FD&C Act in accordance with 21 CFR part 1, subpart H (subpart H), such person must maintain records identifying the immediate previous source of such food and the immediate subsequent recipient of such food in accordance with the subpart J traceability requirements in §§ 1.337 and 1.345 (which apply to the receipt and release of foods by nontransporters of food). Thus, although certain commingled RACs (as defined in proposed § 1.1305(f)(1)) generally would be exempt from the proposed rule, persons who manufacture, process, pack, or hold these RACs who are required to register with FDA as a food facility would have to comply with the existing food traceability recordkeeping requirements in §§ 1.337 and 1.345. While we recognize that many firms are already required to comply with §§ 1.337 and 1.345 because they are subject to the subpart J recordkeeping requirements, this provision creates an independent obligation to comply with these provisions with respect to foods on the Food Traceability List, including for firms that are not subject to subpart J.

Proposed § 1.1305(f)(2) would further specify that such records identifying immediate previous sources and immediate subsequent recipients of these commingled RACs would have to be maintained for 2 years, consistent with the retention requirement for other records maintained in accordance with subpart S. We discuss the proposed retention requirements for subpart S records in more detail in section V.H.3.

7. Exemption or Partial Exemption for Small Retail Food Establishments (Proposed § 1.1305(g))

On our own initiative, we are co-proposing either a full exemption or a partial exemption from the proposed subpart S requirements for retail food establishments that employ 10 or fewer full-time equivalent employees. Such retail food establishments are exempt from the subpart J requirements under § 1.327(f), except that they are subject to §§ 1.361 and 1.363, which relate to record availability. Although we are considering adopting a full exemption from the proposed subpart S recordkeeping requirements for small retail food establishments, we also are considering whether a more limited exemption for these firms would be appropriate. Therefore, in proposed § 1.1305(g), we are co-proposing two options for full or partial exemption for small retail food establishments, as discussed in the following paragraphs.

a. Option 1: Full Exemption for Small Retail Food Establishments

Option 1 of the co-proposal would specify that subpart S does not apply to retail food establishments that employ 10 or fewer full-time equivalent employees. Option 1 would further state that the number of full-time equivalent employees is based on the number of such employees at each retail food establishment and not the entire business, which may own numerous retail stores. Because these smaller retail food establishments might handle a lesser volume of food than larger establishments, it is possible that requiring the smaller establishments to comply with subpart S would impose costs that would outweigh the benefits of such compliance. In addition, because many of the foods sold at small retail food establishments are nationally distributed and are also sold at larger retail food establishments, we may be able to obtain relevant information about the source of a foodborne illness outbreak from a larger establishment that sold the same food using the same distributor.

On the other hand, because these smaller firms might also be more likely to have less robust traceability records and procedures, fully exempting these firms from the proposed recordkeeping requirements would make it more difficult for FDA to obtain needed tracing information from these firms when investigating a foodborne illness outbreak. There would likely be significant delays in obtaining pertinent tracing data due to the variability of information maintained by these small establishments. The need to rely on the supplier of these small establishments for the tracing data that would be required under this rule would likely result in at least a 24- to 48-hour delay in the traceback. In addition, small retail food establishments can make a particularly important contribution to tracebacks by serving to narrow the scope of products implicated during an investigation. Key data elements, such as lot codes, are not required at the consumer level, requiring traceback investigations to implicate all lot codes available for purchase on a given purchase date identified by the consumer. Retail food establishments, especially larger ones, often receive the same product from multiple distributors, which makes it difficult to narrow the suppliers of interest in an investigation. On the other hand, small establishments often receive product from limited sources, which can make them particularly valuable during an outbreak in narrowing the suppliers of interest and focusing the traceback investigation. The inability to narrow the suppliers of interest and focus the information relevant to the potential source of contamination not only prolongs a traceback effort but might also result in conducting a broader recall than would otherwise be necessary had the firms maintained records required under subpart S (Ref. 22).

b. Option 2: Partial Exemption for Small Retail Food Establishments

Option 2 for proposed § 1.1305(g) would specify that the requirement in proposed § 1.1455(b)(3) to make available to FDA under specified circumstances an electronic sortable spreadsheet containing the information required to be maintained under this subpart (for the foods and date ranges specified in FDA's request) does not apply to retail food establishments that employ 10 or fewer full-time equivalent employees. (The above-stated text regarding determination of the number of full-time equivalent employees also would be included.) As discussed in section V.I.2, we propose to require that, when necessary to help FDA prevent or mitigate a foodborne illness outbreak, or to assist in the implementation of a recall, or to otherwise address a threat to the public health, persons subject to the subpart S requirements must make available, within 24 hours of request by an authorized FDA representative, an

electronic sortable spreadsheet containing the information in the records they are required to maintain under subpart S, for the foods and date ranges specified in the request. We believe that having access to a firm's required traceability information in such electronic form would help us more quickly identify the source of potentially contaminated food on the Food Traceability List and remove the food from the marketplace. Nevertheless, we recognize that smaller firms might be less likely to have the resources to readily produce their traceability information in such a format. Exempting small retail food establishments from this requirement could reduce their burden of complying with the subpart S requirements, while still providing us with access to relevant and specific tracing information when investigating foodborne illness outbreaks involving listed foods received by such establishments.

We request comment on whether we should adopt Option 1 of the co-proposal for § 1.1305(g), which would fully exempt small retail food establishments from subpart S, or Option 2, which would exempt these firms from the requirement to provide to FDA, under certain circumstances, an electronic sortable spreadsheet containing required traceability information. Of course, you may also comment on whether any full or partial exemption for small retail food establishments from the proposed traceability recordkeeping requirements is appropriate. We also request comment on whether having 10 or fewer full-time equivalent employees is an appropriate size limit for a ''small'' retail food establishment under these proposed options and, if not, what an appropriate limit would be.

8. Partial Exemption for Retail Food Establishments (Proposed § 1.1305(h))

In addition to the proposed full or partial exemption for small retail food establishments in proposed § 1.1305(g), in accordance with section 204(d)(6)(G) of FSMA, we propose to adopt a partial exemption from the subpart S requirements for all retail food establishments when they receive foods on the Food Traceability List directly from a farm. Proposed § 1.1305(h)(1) would provide that subpart S would not apply to a retail food establishment with respect to foods on the Food Traceability List that are produced on a farm (including foods produced and packaged on the farm) and sold directly to the retail food establishment by the owner, operator, or agent in charge of that farm, except as specified in proposed § 1.1305(h)(2). Under proposed § 1.1305(h)(2), when a retail food establishment purchases a food on the Food Traceability List directly from the owner, operator, or agent in charge of a farm, the retail food establishment would be required to establish and maintain a record documenting the name and address of the farm that was the source of the food. Consistent with section 204(d)(6)(G) of FSMA, retail food establishments would be required to maintain these farm identification records for 180 days.

Although section 204(d)(6)(G) of FSMA specifies that this limited tracing requirement to document the farm that was the source of the food applies to grocery stores, we propose to broaden the application of this partial exemption to include all retail food establishments purchasing food directly from farms. We believe it is appropriate to apply this partial exemption to all retail food establishments because we think there is no meaningful or easy way to distinguish grocery stores from other retail food establishments such as convenience stores and vending machine locations.

9. Partial Exemption for Farm to School and Farm to Institution Programs (Proposed § 1.1305(i))

Having consulted with the USDA in accordance with section 204(d)(6)(A) of FSMA, we believe it is appropriate to establish, in proposed § 1.1305(i), a partial exemption from the subpart S requirements for farm to school and farm to institution programs operated under the auspices of the USDA, State agencies, or local jurisdictions to avoid placing undue burdens on these programs. Farm to school programs include, but are not limited to, programs in which farms sell food such as fruits, vegetables, eggs, beans, and meat to: (1) Schools under competitive procurement; (2) competitively procured food distributors; and (3) Child Nutrition Programs, including the USDA DoD Fresh Fruit and Vegetable Program, that provide USDA-purchased domestic agricultural products (USDA Foods). Proposed § 1.1305(i)(1) would provide that, except as specified in § 1.1305(i)(2), the subpart S requirements would not apply to an institution operating a child nutrition program authorized under the Richard B. Russell National School Lunch Act or Section 4 of the Child Nutrition Act of 1966, or any other entity conducting a farm to school or farm to institution program, with respect to a food on the Food Traceability List that is produced on a farm (including food produced and packaged on the farm) and sold directly to the school or institution. Under proposed § 1.1305(i)(2), when a school or institution conducting farm to school or farm to institution activities purchases a food on the Food Traceability List directly from a farm, the school food authority or relevant food procurement entity must establish and maintain a record documenting the name and address of the farm that was the source of the food. Proposed § 1.1305(i)(2) specifies that the school food authority or relevant food procurement entity must maintain the records identifying the farm for 180 days, the same retention period that we propose for records maintained under the partial exemption for retail food establishments in proposed § 1.1305(g).

10. Partial Exemption for Fishing Vessels (Proposed § 1.1305(j))

In accordance with section 204(d)(6)(C) of FSMA, we propose to adopt a partial exemption from the proposed traceability recordkeeping requirements for fishing vessels. Proposed § 1.1305(j)(1) would provide that, except as specified in proposed § 1.1305(j)(2), with respect to a food produced through the use of a fishing vessel, subpart S would not apply to the owner, operator, or agent in charge of the fishing vessel. In accordance with section 204(d)(6)(C) of FSMA, ''fishing vessel'' would be defined (in proposed § 1.1310) as that term is defined in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(18)), *i.e.,* as any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. Under this partial exemption, activities of fishing vessels such as harvesting, transporting, heading, eviscerating, and freezing fish would generally not be subject to the proposed recordkeeping requirements.

Under this exemption, the owner, operator, or agent in charge of a fishing vessel also would not have to keep tracing records on the sale and shipment of food produced through the use of the vessel, except as provided in proposed § 1.1305(j)(2) (discussed in the following paragraph). Section 204(d)(6)(C) of FSMA somewhat ambiguously states that the section 204(d) requirements applicable to fishing vessels would be limited to certain requirements for vessels that are required to register with FDA (set forth in proposed

§ 1.1305(j)(2)) ''until such time as the food is sold by the owner, operator, or agent in charge of such fishing vessel.'' Although the phrase ''until such time'' could be interpreted as meaning that the owner, operator, or agent in charge of the fishing vessel could be subject to requirements relating to the sale of the relevant food, we believe it is appropriate to exempt the owner, operator, or agent in charge of the fishing vessel from all requirements relating to the relevant food (except as specified in proposed § 1.1305(j)(2)).

In accordance with section 204(d)(6)(C) and (F) of FSMA, proposed § 1.1305(j)(2) would specify that if the owner, operator, or agent in charge of the fishing vessel who receives the exemption in proposed § 1.1305(j)(1) is required to register with FDA under section 415 of the FD&C Act with respect to the manufacturing, processing, packing, or holding of the applicable food, in accordance with subpart H, that person would be required to maintain records identifying the immediate previous source of such food and the immediate subsequent recipient of such food in accordance with §§ 1.337 and 1.345. This means that fishing vessels that must register with FDA because they process fish on the vessel would be required to comply with the existing subpart J traceability recordkeeping requirements in §§ 1.337 and 1.345, even though many such fishing vessels are currently exempt from those requirements under § 1.327(c). Affected fishing vessels would be required to maintain such records for 2 years (proposed § 1.1305(j)(2)), the retention period for subpart S records specified in proposed § 1.1460(c) (see section V.H.3).

11. Exemption for Transporters (Proposed § 1.1305(k))

On our own initiative, we propose to exempt transporters of food from the proposed traceability recordkeeping requirements (proposed § 1.1305(k)). We propose to define a ''transporter'' as a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food, whether by road, rail, water, or air (proposed § 1.1310). We believe that transporters should be exempt from the proposed rule because we find that in most of our investigations of potential foodborne illness outbreaks, it is not necessary to inspect records maintained by food transporters because we generally are able to obtain the tracing information we need from other persons in the food's supply chain. If necessary, we could review records maintained by transporters of the food in the usual course of business or, when applicable, in accordance with the subpart J regulations.

12. Exemption for Nonprofit Food Establishments (Proposed § 1.1305(l))

Proposed § 1.1305(l) would provide that subpart S would not apply to nonprofit food establishments, consistent with their exclusion from the subpart J regulations (see § 1.327(l)). We propose to define a nonprofit food establishment as in subpart J (§ 1.328), *i.e.,* as a charitable entity that prepares or serves food directly to the consumer or otherwise provides food or meals for consumption by humans or animals in the United States (proposed § 1.1310). The term would include central food banks, soup kitchens, and nonprofit food delivery services. In addition, to be considered a nonprofit food establishment, the establishment must meet the terms of section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)).

13. Exemption for Persons Who Manufacture, Process, Pack, or Hold Food for Personal Consumption (Proposed § 1.1305(m))

Proposed § 1.1305(m) would provide that subpart S would not apply to persons who manufacture, process, pack, or hold food for personal consumption. Such persons are excluded from the subpart J requirements under § 1.327(m). As discussed in the preamble to the final rule adopting the subpart J requirements (69 FR 71562 at 71579), whether a food is for personal consumption depends on many factors, but we would consider food prepared in a private home and transported for other than business purposes (*e.g.,* to a ''pot luck'' dinner with friends) to qualify for this exemption.

14. Exemption for Persons Who Hold Food for Individual Consumers (Proposed § 1.1305(n))

Proposed § 1.1305(n) would provide that subpart S would not apply to persons who hold food on behalf of specific individual consumers, provided that such persons: (1) Are not parties to the transaction involving the food they hold and (2) are not in the business of distributing food. This would mirror the exemption for such persons from the subpart J requirements (see § 1.327(n)). This exemption would cover persons such as a hotel concierge, reception desk staff in an apartment building, and staff at an office complex who receive and store a food on the Food Traceability List on behalf of the consumer but are not parties to the purchase of the food they hold and are not in the business of distributing food (see 69 FR 71562 at 71570 to 71571).

C. Definitions (Proposed § 1.1310)

Proposed § 1.1310 sets forth the meaning of several terms we propose to use in the regulations on additional traceability recordkeeping. Some of the definitions are self-explanatory or are being used for consistency with the existing traceability recordkeeping requirements in subpart J and/or other food safety regulations. In the following paragraphs we discuss definitions of terms used in the proposed rule.

1. Category

We propose to define ''category'' as a code or term used to classify a food product in accordance with a recognized industry or regulatory classification scheme, or a classification scheme a person develops for their own use. Examples of industry or regulatory classification schemes include the GS1 Global Product Classification standard, the United Nations Standard Products and Services Code, the Food and Agriculture Organization of the United Nations 3-Alpha Seafood Species Code, and the European Union Common Procurement Vocabulary. Rather than use a recognized product classification scheme, a firm might choose to develop its own classification scheme to meet its unique product, customer, or other business needs.

2. Cooling

We propose to define ''cooling'' as active temperature reduction of a food using hydrocooling, icing, forced air cooling, vacuum cooling, or a similar process, either before or after packing. We discuss proposed recordkeeping requirements related to the cooling of listed foods beginning in section V.E.2.

3. Creating

We propose to define ''creating'' as making or producing a food on the Food Traceability List (*e.g.,* through manufacturing or processing) using only ingredient(s) that are not on the Food Traceability List. The definition further states that creating does not include originating or transforming a food. We discuss proposed recordkeeping requirements related to the creation of listed foods in sections V.D and V.E.4.

4. Critical Tracking Event

We propose to define ''critical tracking event'' as an event in the supply chain of a food involving the growing, receiving (including receipt by a first receiver), transforming, creating, or shipping of the food. We discuss

proposed recordkeeping requirements for particular critical tracking events in section V.E.

5. Farm

The proposed rule would define ''farm'' as it is defined in § 1.328 of the subpart J traceability regulations (and other FDA food safety regulations). The definition further states that, for producers of shell eggs, ''farm'' means all poultry houses and grounds immediately surrounding the poultry houses covered under a single biosecurity program (matching the definition of farm under § 118.3 in the shell egg production regulations).

6. First Receiver

We propose to define ''first receiver'' as the first person (other than a farm) who purchases and takes physical possession of a food on the Food Traceability List that has been grown, raised, caught, or (in the case of a non-produce commodity) harvested. A first receiver of a food might be a manufacturer/processor, distributor, or other non-farm entity who receives a food that has been originated. As discussed in section V.E.2, we believe it is appropriate to require first receivers of listed foods to maintain records containing information about the production of the foods (including information on the harvesting, cooling, and packing of the foods, if applicable) and, for first receivers of seafood, information related to the harvest date range and locations for the trip during which the seafood was caught.

However, an entity that receives a listed food after it has been created (*e.g.,* the first purchaser of a nut butter product) would not be a first receiver under the proposed rule. It would not be appropriate to require the first purchaser of a created food to establish and maintain the first receiver KDEs because those KDEs focus on on-farm practices and other originating events, while created foods have already undergone some form of manufacturing or processing.

7. Fishing Vessel

We propose to define ''fishing vessel'' as any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. In accordance with section 204(d)(6)(C) of FSMA, this matches the definition of ''fishing vessel'' in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act.

8. Food Traceability List

We propose to define the ''Food Traceability List'' as the list of foods for which additional traceability records are required to be maintained, as designated in accordance with section 204(d)(2) of FSMA. The definition further states that the term ''Food Traceability List'' includes both the foods specifically listed and foods that contain specifically listed foods as ingredients.

9. Growing Area Coordinates

We propose to define ''growing area coordinates'' as the geographical coordinates (under the global positioning system (GPS) or latitude/longitude) for the entry point of the physical location where the food was grown and harvested. We discuss the importance for traceability of requiring growers of food to maintain information on the growing area coordinates for the food in section V.E.1.

10. Harvesting

We propose to define ''harvesting'' as it is defined in the subpart J regulations and other FDA food safety regulations, with some minor differences. Thus, ''harvesting'' applies to farms and farm mixed-type facilities and means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities performed on raw agricultural commodities, or on processed foods created by drying/dehydrating a raw agricultural commodity without additional manufacturing/processing, on a farm. Harvesting does not include activities that transform a raw agricultural commodity into a processed food as defined in section 201(gg) of the FD&C Act. Examples of harvesting include cutting (or otherwise separating) the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity (*e.g.,* foliage, husks, roots, or stems). Examples of harvesting also include collecting eggs, taking of fish and other seafood in aquaculture operations, milking, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm. Although egg collection and taking of fish and other seafood in aquaculture operations are not included among the examples of harvesting in the definition in subpart J, we want to make clear that we consider these activities to be harvesting. We propose not to include ''cooling'' as an example of harvesting activities under subpart S, even though it is included in the subpart J definition, because for traceability purposes we wish to distinguish cooling from harvesting.

11. Holding

We propose to define ''holding'' as storage of food, and to also include activities performed incidental to storage of a food (*e.g.,* activities performed for the safe or effective storage of that food, such as fumigating food during storage, and drying/dehydrating raw agricultural commodities when the drying/dehydrating does not create a distinct commodity (such as drying/dehydrating hay or alfalfa)). Holding would also include activities performed as a practical necessity for the distribution of that food (such as blending of the same raw agricultural commodity and breaking down pallets) but would not include activities that transform a raw agricultural commodity into a processed food as defined in section 201(gg) of the FD&C Act. The proposed definition specifies that holding facilities include warehouses, cold storage facilities, storage silos, grain elevators, and liquid storage tanks.

We believe that persons who do not physically possess food are not engaged in holding of food within the meaning of the proposed rule. This means, for example, that a person who coordinates the import of a listed food but never takes physical possession of the food would not be subject to the rule, while a person who imports a listed food they physically possess would be subject to the rule unless an exemption applied. For example, some firms buy food produced in foreign countries, arrange for the importation of the food into the United States, and sell the food to other U.S. firms without ever taking physical possession of the food; such firms would not be subject to the rule. Similarly, food brokers who negotiate sales of food from producers to wholesalers, retail stores, and others but never physically possess the food would not be subject to the rule.

We are aware that such importers and brokers often maintain tracing information on the food, while some firms that would be subject to the rule because they hold food (such as distributors) might not currently maintain tracing information. For example, a cold storage facility that receives imported produce might not keep tracing records on such produce because the importer of record, broker,

or other firm has the relevant information on the produce. As discussed in section V.D.1, we propose to allow persons subject to the proposed rule to designate an individual or firm who will establish and maintain tracing records on behalf of the person, although the person subject to the rule would remain responsible for meeting the subpart S requirements. This would enable firms who hold imported foods to enter into agreements with importers of record, brokers, and others to keep required tracing records for the foods on their behalf.

We also recognize that the headquarters for retail food establishments typically provide centralized information technology resources for their stores, distribution centers, and, in most cases, franchisee locations. For example, even though a firm's headquarters location may not hold food, the firm may decide that headquarters will maintain the records for each of the firm's retail food establishment locations. In addition, retail food establishments may designate third parties to maintain their traceability records on their behalf (although the establishment would remain responsible for ensuring the subpart S requirements are met for the foods the firm holds).

12. Key Data Element

We proposed to define ''key data element'' as information associated with a CTE for which a record must be established and maintained in accordance with subpart S. We discuss proposed requirements for records containing KDEs associated with CTEs in section V.E.

13. Kill Step

We propose to define ''kill step'' as processing that significantly minimizes pathogens in a food. Examples of kill steps include cooking, pasteurization, heat treatment, high-pressure processing, and irradiation, as long as those processes are conducted in a manner that significantly minimizes pathogens in the food. We discuss proposed requirements for foods on the Food Traceability List that are subjected to a kill step in section V.F.

14. Location Description

We propose to define ''location description'' as a complete physical address and other key contact information, specifically the business name, physical location name, primary phone number, physical location street address (or geographical coordinates), city, state, and zip code for domestic facilities and comparable information for foreign facilities, including country; except that for fishing vessels, ''location description'' would mean the name of the fishing vessel that caught the seafood, the country in which the fishing vessel's license (if any) was issued, and a point of contact for the fishing vessel.

Location descriptions are typically stored in business systems used for purchasing, manufacturing, and selling goods and services. Table 3 provides an example of the data attributes in a location description for a food processor.

TABLE 3—EXAMPLE OF DATA ATTRIBUTES FOR LOCATION DESCRIPTION

KDE	Data attributes	Example
Location Description	Business name	Fin-to-Tail Processing Co.
	Physical location name	Facility #345.
	primary phone number	222.222.2222.
	Physical location street address	456 Blue Water Way.
	City	Sarasota.
	State	FL.
	ZIP code	98765.

15. Location Identifier

We propose to define ''location identifier'' as a unique identification code that an entity assigns to the physical location name identified in the corresponding location description; except that for fishing vessels, ''location identifier'' would mean the vessel identification number or license number (both if available) for the fishing vessel. Location identifiers are typically stored with location descriptions in business systems used for purchasing, manufacturing, and selling goods and services.

Along with location descriptions, firms could keep all the location identifiers for their suppliers, customers, and other supply chain partners in an electronic master file. Many firms maintain ''master data'' containing information on products, companies, and locations, as well as other key commercial information. Trading partners often share certain master data information with each other to simplify business transactions. Persons subject to the proposed rule could meet their requirements to keep records on different location descriptions and identifiers (*e.g.,* for firms from which they receive foods and firms to which they ship food) in electronic master data files. Table 4 illustrates how a firm might maintain relevant information identifying the locations of its supply chain partners using location identifier and location description KDEs.

TABLE 4—EXAMPLE OF LOCATION MASTER DATA LISTING

Location identifier	Location description						
	Business Name	Physical Location Name	Primary Phone	Street	City	State	Zip code
ALPHA–01	Alpha Eggs	Bldg. 3	999.999.9999	101 Birch	Springfield	MO	111111
GG–CA–01	Gary Greens	Field 21	888.888.8888	818 Elm	Salinas	CA	222222
GG–AZ–02	Gary Greens	Cooler #1	777.777.7777	789 Maple	Yuma	AZ	333333

16. Lot

We propose to define ''lot'' as the food produced during a period of time at a single physical location and identified by a specific code, noting that a lot may also be referred to as a ''batch'' or ''production run.'' While each firm determines the size or quantity of a lot, we recommend that lots consist of product produced under uniform conditions, be as small as possible, and generally not exceed 24 hours of production. Limiting the size of a lot allows for more precise traceability of a product and helps narrow the scope of potentially recalled product.

17. Manufacturing/Processing

We propose to define ''manufacturing/processing'' as it is defined in subpart J and other FDA food safety regulations, *i.e.,* making food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating food, including food crops or ingredients. The definition further provides that examples of manufacturing/processing activities include the following: baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing. The definition also states that for farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

18. Mixed-Type Facility

We propose to define ''mixed-type facility'' as it is defined in subpart J, *i.e.,* an establishment that engages in both activities that are exempt from registration under section 415 of the FD&C Act and activities that require the establishment to be registered. The proposed definition further states that an example of a mixed-type facility is a farm mixed-type facility, which is an establishment that is a farm but also conducts activities outside the farm definition that require the establishment to be registered.

19. Nonprofit Food Establishment

We propose to define ''nonprofit food establishment'' as it is defined in subpart J, *i.e.,* a charitable entity that prepares or serves food directly to the consumer or otherwise provides food or meals for consumption by humans or animals in the United States. The term would include central food banks, soup kitchens, and nonprofit food delivery services. To be considered a nonprofit food establishment, the establishment would be required to meet the terms of section 501(c)(3) of the U.S. Internal Revenue Code.

20. Originating

We propose to define ''originating'' as an event in a food's supply chain involving the growing, raising, or catching of a food (typically on a farm, a ranch, or at sea), or the harvesting of a non-produce commodity. Section V.E.2 discusses a proposed requirement that the first receiver of a listed food keep information on the originator of the food, such as a farm.

21. Originator

We propose to define ''originator'' as a person who grows, raises, or catches a food, or harvests a non-produce commodity.

22. Packing

We propose to define ''packing'' as it is defined in subpart J and other food safety regulations, *i.e.,* placing food into a container other than packaging the food. ''Packing'' also includes re-packing and activities performed incidental to packing or re-packing a food (*e.g.,* activities performed for the safe or effective packing or re-packing of that food (such as sorting, culling, grading, and weighing or conveying incidental to packing or re-packing)), but would not include activities that transform a raw agricultural commodity (as defined in section 201(r) of the FD&C Act) into a processed food as defined in section 201(gg) of the FD&C Act.

23. Person

We propose to define ''person'' as including an individual, partnership, corporation, and association. This matches the definition of ''person'' in section 201(e) of the FD&C Act.

24. Physical Location Name

We propose to define ''physical location name'' as the word(s) used to identify the specific physical site of a business entity where a particular CTE occurs. Examples could be ''Packing Shed 2,'' ''Store #7228,'' or ''Warehouse A.'' The definition further states that a physical location name might be the same as an entity's business name if the entity has only one physical location. Tables 3 and 4 provide additional examples of physical location names.

25. Point of Contact

We propose to define ''point of contact'' as an individual having familiarity with an entity's procedures for traceability, including their name, telephone number, and, if available, their email address and fax number. As discussed, beginning in section V.E.2, the proposed rule would require certain first receivers, receivers, and shippers of listed foods to maintain information on points of contact for certain entities in a food's supply chain.

26. Produce

We propose to define ''produce'' to mean produce as defined in § 112.3 in the produce safety regulations.

27. Receiving

We propose to define ''receiving'' as an event in a food's supply chain in which a food is received by a customer (other than a consumer) at a defined location after being transported (*e.g.,* by truck or ship) from another defined location. We discuss the traceability records we propose to require for receipt of foods on the Food Traceability List in section V.E.3.

28. Reference Record

We propose to define ''reference record'' as a record used to identify an event in the supply chain of a food, such as a shipping, receiving, growing, creating, or transformation event. The proposed definition states that types of reference records include, but are not limited to, bills of lading (BOL), purchase orders, advance shipping notices (ASNs), work orders, invoices, batch logs, production logs, and receipts. We discuss the use of reference records in product tracing beginning in section V.D.1.

29. Reference Record Number

We propose to define ''reference record number'' as the identification number assigned to a reference record, such as a purchase order number, bill of lading number, or work order number.

30. Retail Food Establishment

We propose to define ''retail food establishment'' as it is defined in the food facility registration regulations (§ 1.227)), *i.e.,* as an establishment that sells food products directly to consumers as its primary function. The definition further specifies the following:

- The term ''retail food establishment'' includes facilities that manufacture, process, pack, or hold food if the establishment's primary function is to sell from that establishment food, including food that

it manufactures, processes, packs, or holds, directly to consumers;

- a retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers;
- the term ''consumers'' in the definition does not include businesses; and
- retail food establishments include, but are not limited to, grocery stores, convenient stores, and vending machine locations.

The definition of ''retail food establishment'' also includes certain farm-operated businesses selling food directly to consumers as their primary function. The definition further specifies that the sale of food directly to consumers from an establishment located on a farm includes sales by that establishment directly to consumers in the following circumstances:

- At a roadside stand (a stand situated on the side of or near a road or thoroughfare at which a farmer sells food from his or her farm directly to consumers) or farmers' market (a location where one or more local farmers assemble to sell food from their farms directly to consumers);
- through a community supported agriculture program. Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. This includes CSA programs in which a group of farmers consolidate their crops at a central location for distribution to shareholders or subscribers; and
- at other such direct-to-consumer sales platforms, including door-to-door sales; mail, catalog and internet order, including online farmers' markets and online grocery delivery; religious or other organization bazaars; and State and local fairs.

The definition further states that the sale of food directly to consumers by a farm-operated business includes the sale of food by that farm-operated business directly to consumers in the same circumstances just specified with respect to sale of food directly to consumers from an establishment located on a farm.

Although not specified in this definition of ''retail food establishment,'' we regard restaurants, online food retailers, and meal kit delivery companies as other examples of such establishments.

31. Shipping

We propose to define ''shipping'' as an event in a food's supply chain in which a food is arranged for transport (*e.g.,* by truck or ship) from a defined location to another defined location at a different farm, a first receiver, or a subsequent receiver. This would mean that, for example, shipping would not include arranging for transport of a food between different locations of a single farm. The definition further specifies that shipping does not include the sale or shipment of a food directly to a consumer or the donation of surplus food.

As with the subpart J regulations, the proposed traceability recordkeeping requirements would not apply to the sale of food to consumers by retail food establishments, such as grocery stores, convenience stores, and restaurants. We have tentatively concluded that to require retail facilities to keep records of each individual recipient consumer would be too burdensome and not necessary to address credible threats of serious adverse health consequences or death to humans or animals. However, we acknowledge that some retail food establishments are able to use their consumer loyalty cards to provide consumer-level data (see 68 FR 25188 at 25192, May 9, 2003). We discuss the traceability records we propose to require for shipment of foods on the Food Traceability List in section V.E.5.

32. Traceability Lot

We propose to define ''traceability lot'' as a lot of food that has been originated, transformed, or created.

33. Traceability Lot Code

We propose to define ''traceability lot code'' to mean a descriptor, often alphanumeric, used to identify a traceability lot. As with location descriptions and location identifiers, traceability lot codes are typically stored in business systems and printed in human readable and machine-readable format on food product packaging. We discuss the generation and use of traceability lot codes in product tracing in section V.D.1.

34. Traceability Lot Code Generator

We propose to define ''traceability lot code generator'' to mean the person who assigns a traceability lot code to a product.

35. Traceability Product Description

We propose to define ''traceability product description'' to mean a description of a food product typically used commercially for purchasing, stocking, or selling, and includes the category code or term, category name, and trade description. As with traceability lot codes, traceability product descriptions are typically stored in business systems and printed in human readable format on food product packaging.

The definition of ''traceability product description'' further states that for single-ingredient products, the trade description includes the brand name, commodity, variety, packaging size, and packaging style; for multiple-ingredient food products, the trade description includes the brand name, product name, packaging size, and packaging style.

The same term might be used for different components of the traceability product description of a food. For example, ''cucumber'' may be used as both the category and the commodity.

36. Traceability Product Identifier

We propose to define ''traceability product identifier'' as a unique identification code (such as an alphanumeric code) that an entity assigns to designate a specific type of food product. As with traceability lot codes and traceability product descriptions, traceability product identifiers are typically stored in business systems and printed in human and machine-readable format on food product packaging. We discuss the use of traceability product identifiers in section V.E.3.

Table 5 illustrates how information in traceability product identifiers and descriptions could be maintained.

TABLE 5—EXAMPLE OF DATA ATTRIBUTES FOR TRACEABILITY PRODUCT DESCRIPTIONS AND TRACEABILITY PRODUCT IDENTIFIERS

Traceability product identifier	Traceability product description data attributes							
	Category		Trade Description					
	Category code or term	Category name	Brand name	Commodity	Variety	Product name	Packaging size	Packaging style
614141007349	10006162 [1]	Cherry Tomatoes—Round [1].	Brand ABC	Tomatoes	Cherry	n/a	25 LB	Carton.
183859303020	10006260 [1]	Sprouts (Fresh) [1].	Brand ABC	n/a	n/a	Sprout Mix	4 oz	Clamshell.
20614141004366	BFT [2]	Blue Fin Tuna [2].	Brand 123	Tuna	Atlantic Bluefin	n/a	10 KG	Bin.
498265800732	Soft Cheese [3].	Soft Cheese [3].	Brand XYZ	N/A	N/A	Queso Fresco	12 × 8 Ounce.	Vac Pack.
5 1462872318 2	Fresh Cut Produce [3].	Fresh Cut Produce [3].	Brand 999	N/A	N/A	Small Vegetable Tray w/dip.	6 oz	Tray.
7483945748383	10000161 [1]	Biscuits/Cookies (Shelf Stable) [1].	Brand CDE	N/A	N/A	Peanut Butter Sandwich Cracker.	12 oz	Box.

[1] Example of a category that is assigned using the GS1 Global Product Classification Scheme.
[2] Example of a category that is assigned using the United Nations Food and Agriculture Organization's Aquatic Sciences and Fisheries Information System (ASFIS) List of Species for Fishery Statistics Purposes, 3A code.
[3] Example of a category that is self-assigned by a firm.

37. Transformation

We propose to define ''transformation'' as an event in a food's supply chain that involves changing a food on the Food Traceability List, its package, and/or its label (regarding the traceability lot code or traceability product identifier), such as by combining ingredients or processing a food (*e.g.,* by cutting, cooking, commingling, repacking, or repackaging). The definition would further specify that transformation does not include initial packing of a single-ingredient food or creating a food. We understand that this definition of ''transformation'' might differ from the way the term is defined in other traceability systems and approaches; however, we believe this definition is appropriate for use with traceability records for foods on the Food Traceability List, as discussed in section V.E.4.

38. Transporter

We propose to define ''transporter'' as a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food, whether by road, rail, water, or air. This definition of ''transporter'' is the same as in subpart J except that it omits language differentiating foreign from domestic transporters, which is not necessary under subpart S. As discussed in section V.B.9, we propose to exempt transporters from the subpart S requirements.

39. Vessel Identification Number

We propose to define ''vessel identification number'' to mean the number assigned to a fishing vessel by the International Maritime Organization, or by any entity or organization, for the purpose of uniquely identifying the vessel. We request comment on whether the proposed definition provides appropriate flexibility regarding the manner in which fishing vessels are uniquely identified.

D. Traceability Program Records (Proposed §§ 1.1315 Through 1.1320)

We propose to require persons who manufacture, process, pack, or hold foods on the Food Traceability List to create and maintain certain records related to their internal traceability program. As described further below, these ''traceability program records'' concern the use of reference records, maintaining a list of foods on the Food Traceability List that are shipped, the assignment of traceability lot codes to listed foods, and information on the classification schemes a firm uses for traceability.

We encourage firms to maintain required traceability information in electronic form. Because electronic recordkeeping itself has not yet been universally adopted, it is especially important that firms be able to provide information on how they conduct their required traceability operations to help us more quickly review and understand the information we need to conduct an investigation into a foodborne illness outbreak involving a listed food.

1. Traceability Program Records (Proposed § 1.1315)

Proposed § 1.1315 answers the question, ''What traceability program records must I have for foods on the Food Traceability List that I manufacture, process, pack, or hold?'' Proposed § 1.1315(a) would require persons subject to subpart S to establish and maintain certain traceability program records. We note that, for these and all other records required under subpart S, persons subject to these requirements may enter into agreements with individuals or firms to create and keep the records required under this rule on their behalf. As discussed later in this document, this could include records documenting KDEs for CTEs such as growing, receiving, shipping, transforming, and creating listed foods. Firms could, for example, retain consultants or other outside entities to perform some or all of their subpart S responsibilities, or rely on their supply chain partners, such as their brokers or suppliers, to establish and maintain required records on their behalf. We believe that allowing firms to enter into such agreements will allow for flexibility and accommodate current business practices while ensuring that persons subject to the rule remain responsible for ensuring that these recordkeeping requirements are met.

a. Description of Reference Records (Proposed § 1.1315(a)(1))

Proposed § 1.1315(a)(1) would require persons subject to subpart S to establish and maintain a description of the reference records in which they

maintain the information required under subpart S, an explanation of where on the records the required information appears, and, if applicable, a description of how reference records for different tracing events for a food (*e.g.,* receipt, transformation, shipment) are linked. We encourage firms to maintain required traceability information in a single electronic system; however, we recognize there are firms that currently do not have product tracing systems that enable them to do this. We therefore propose to require firms to describe the particular types of reference records in which they keep the required tracing information to help expedite the firm's production of records and facilitate our review of those records during a foodborne illness outbreak investigation. In some recent foodborne illness outbreaks, some firms' inability to quickly identify and make available to us pertinent information on such matters as production, receipt, and shipment of a possibly contaminated food has significantly delayed completion of our investigation, resulting in greater harm to consumers. Furthermore, even when a firm produces the relevant records, additional delays can occur when it is difficult for us to find the relevant information on those records.

Proposed § 1.1315(a)(1) also would require documentation, if applicable, of how the reference records used for different tracing events for a food are linked. The ability to link incoming with outgoing products within a firm and from one point in the supply chain to the next is critical for traceability. Rarely are there identifiers that link a product as it moves from firm to firm through the supply chain, and often identifiers are lacking within a single firm. One firm may assign a lot code to a product shipment, and the firm receiving the product may assign a new lot code or other identifying code to the product that is not connected by records to the incoming product. Additionally, the incoming product may be processed and used as an ingredient in many different products without any documentation of the link between the ingredient and the finished products, thus compounding the challenge of linking incoming products within a firm to outgoing products.

Another challenge associated with linking of traceability records is that a food product may not always retain the same description as it moves through the supply chain. For example, an FDA traceback of iceberg lettuce during a cyclosporiasis outbreak in 2013 revealed that the lettuce was referred to as ''iceberg lettuce'' by some firms and as ''lettuce liner size 24'' by others. In a 2012 outbreak of *Salmonella* Bareilly in tuna, the tuna was identified as ''tuna ground meat AAA'' by one supplier and ''frozen yellow fin tuna CO treated'' by the next firm in the supply chain. Use of different descriptions for the same product can make it very difficult or impossible to determine whether two records refer to the same products or shipments.

Having information on how a firm links its records of incoming and outgoing food products, including records of any transformation that may occur at the firm, can help verify movement of a received product through the firm regardless of any changes made to the product or its naming convention. For example, a distributor may use invoices and BOLs as reference records for their traceability information. Knowing which pieces of information are kept within each type of reference record and how those records can be used to show the movement of products within the firm would help FDA understand the products a firm received and what the firm did with them. For example, if a distributor's BOL records contain the necessary information on products received and its invoice records contain the information on products shipped, the distributor could indicate in its traceability program records that an invoice sent to the next point in the supply chain contains the BOL number for the distributor's receipt of the product. This information would help FDA understand the distributor's recordkeeping system and verify movement of incoming and outgoing products at the firm.

b. List of Foods on the Food Traceability List Shipped (Proposed § 1.1315(a)(2))

Proposed § 1.1315(a)(2) would require persons subject to subpart S to establish and maintain a list of foods on the Food Traceability List that they ship, including the traceability product identifier and traceability product description for each food. Depending on the volume of product that a firm handles, if they did not maintain the list required under proposed § 1.1315(a)(2), during an outbreak investigation we might not be able to quickly and easily determine all of the foods on the Food Traceability List that the firm manufactures, processes, packs, or holds, which could delay completion of product tracing or recall. In addition, reviewing a firm's list would help us more quickly analyze information for traceforward purposes during an outbreak, such as when a firm has received and used a recalled ingredient in manufacturing other listed foods of which we were unaware. For example, in a 2008 outbreak involving peanut butter, numerous recalls spanning several months were conducted due to the use of the contaminated peanut butter in other products. Even though we were able to identify the firm that was the source of the peanut butter, having access to a comprehensive list of peanut butter products produced and shipped from the source may have avoided multiple expanded recalls by the same firm over several weeks. In addition, review of a complete list of peanut butter products may have led to efficient and quick traceforward activities to determine additional recipients of potentially contaminated products, which might have enabled faster identification of products produced with potentially contaminated peanut butter by other firms, leading to earlier notification to consumers to avoid such products. In addition, reviewing a firm's list of all foods on the Food Traceability List the firm manufactures, processes, packs, or holds also would help us evaluate the firm's compliance with the subpart S requirements, and we anticipate it will also help firms with their own internal compliance programs.

Although proposed § 1.1315(a)(2) would only require maintenance of a list of foods on the Food Traceability List that a firm ships, best practice would be for a firm to maintain a list of all foods it ships. Firms following that practice could satisfy the requirements of § 1.1315(a)(2) by denoting the foods that are on the Food Traceability List (*e.g.,* with an asterisk).

We realize that a firm's list of foods on the Food Traceability List that they ship may not be accurate in real time if the firm is temporarily out of a commodity or only handles certain products seasonally. The list of foods would indicate which foods on the Food Traceability List a firm generally ships, even if there are gaps in those shipments.

c. Description of How Traceability Lot Codes Are Established and Assigned (Proposed § 1.1315(a)(3))

Proposed § 1.1315(a)(3) would require persons subject to subpart S to establish and maintain a description of how they establish and assign traceability lot codes to foods on the Food Traceability List that they originate, transform, or create, if applicable. Assignment of a lot code allows a food product to be uniquely identified and provides information needed to link shipments of a food between different entities in the supply chain. We believe that tracking

foods to the lot level provides adequate information for traceability operations. (Although some firms conduct product tracing to the case level, the proposed rule would not require that, in accordance with section 204(d)(1)(L)(iii) of FSMA.) During a tracing or recall event, FDA routinely requests lot code information from firms to effectively link movement of foods within a firm and shipments throughout the supply chain. The availability of lot codes along an entire supply chain can facilitate identifying the specific food involved in a contamination event and limiting the scope of a recall event. Lot codes can contain data such as the production line used, plant location, or harvest date. Because of the significance of lot codes in food tracing, understanding how a firm creates and assigns traceability lot codes would provide us with information about the relevance of a code to a particular outbreak investigation and insight on how the code can help us appropriately narrow or broaden the investigation.

d. Other Information Needed To Understand Data (Proposed § 1.1315(a)(4))

Proposed § 1.1315(a)(4) would require persons subject to subpart S to establish and maintain records containing any other information needed to understand the data provided within any required subpart S records, such as internal or external coding systems, glossaries, and abbreviations. We need this information to be able to adequately understand the terminology, methods, and systems a firm uses in its traceability operations. For example, many firms use classification schemes developed by industry (such as the GS1 Global Product Classification standard and the Food and Agriculture Organization of the United Nations Fisheries and Aquaculture and Information Branch List of Species for Fishery Statistics Purposes) or regulatory agency schemes (such as the United Nations Standard Products and Services Code and the European Union Common Procurement Vocabulary) to categorize foods for traceability purposes. Use of standardized product classification schemes, lookup tables, and abbreviations can streamline a firm's internal records and promote interoperability throughout the supply chain, which can speed outbreak investigations. When the records kept in accordance with subpart S make use of such classification schemes, abbreviations, or similar methods, it is important that firms be able to provide us with the information we need to understand those records.

e. Retention Requirement for Traceability Program Records (Proposed § 1.1315(b))

Although we are proposing that most subpart S records be retained for 2 years from the date of creation (see section V.I.3), proposed § 1.1315(b) would require firms to retain the records required under proposed § 1.1315(a) for 2 years after their use is discontinued (*e.g.,* because the firm changes the records in which the required information is maintained, updates the list of foods on the Food Traceability List it ships, or changes its procedures for establishing and assigning traceability lot codes). We believe that a different retention period is appropriate because the records in § 1.1315(a) involve procedures and processes, rather than documentation of the production and handling of particular lots of food products. For example, proposed § 1.1315(b) would ensure that even if a firm uses the same procedures to establish and assign traceability lot codes for many years, a record of these procedures will remain available for FDA review for 2 years after the procedures are discontinued.

2. When Traceability Lot Codes Must Be Assigned (Proposed § 1.1320)

Proposed § 1.1320 answers the question, ''When must I establish and assign traceability lot codes to foods on the Food Traceability List?'' Proposed § 1.1320(a) would require a person subject to subpart S to establish and assign a traceability lot code when they originate, transform, or create a food on the Food Traceability List. Proposed § 1.1320(b) would specify that, except as otherwise specified in the subpart S regulations, a person may not establish a new traceability lot code when conducting other activities (*e.g.,* shipping, receiving) in the supply chain for a food on the Food Traceability List.

Typically, persons who grow or otherwise originate food assign a lot code to the food; the same is true when a food is transformed (*e.g.,* processed in some way) or ''created'' by combining several different ingredients. As previously discussed, lot codes provide important tracing information for a food product. Therefore, we propose to require the assignment of a traceability lot code when a firm originates, transforms, or creates a food on the Food Traceability List. However, some firms assign lot codes to foods they receive even though they do not transform the food or use the food to create a new food product. We believe that assignment of new lot codes to foods in such circumstances can create confusion that can hinder traceback and traceforward efforts during investigation of foodborne illness outbreaks. Therefore, the proposed rule generally would prohibit establishment of a traceability lot code (for the purpose of meeting the proposed subpart S requirements) for a listed food except when originating, transforming, or creating a listed food. However, under proposed § 1.1330(c) (discussed in section V.F.2), if a first receiver receives a listed food to which the originator has not assigned a traceability lot code, the first receiver would be required to establish (and maintain a record of) a traceability lot code for the food.

E. Records of Growing, Receiving, Transforming, Creating, and Shipping Food (Proposed §§ 1.1325 to 1.1350)

As discussed in section III.D.2, we are proposing to require persons who manufacture, process, pack, or hold foods on the Food Traceability List to establish and maintain records containing KDEs related to CTEs in the production and transfer of such foods. Under the proposed rule, the CTEs for which records must be kept are growing a listed food, receiving a listed food (including receipt by a first receiver of a listed food), transforming a listed food, creating a listed food, and shipping a listed food. In addition, the proposed rule includes KDE requirements concerning activities such as harvesting, cooling, and packing food that are included in the CTE requirements just noted. The proposed rule also includes requirements concerning KDEs that shippers of foods on the Food Traceability List must provide to their customers.

As discussed in more detail in the following paragraphs, the KDEs required to be kept would vary depending on the type of supply chain activity. In developing the recordkeeping requirements, we identified which KDEs would be necessary to effectively trace a product based on the CTEs a firm performs (*e.g.,* receiving, transformation, shipping). Not all KDEs are relevant for each CTE; however, firms that perform multiple CTEs would be required to maintain all the KDEs that pertain to the CTEs they perform. For example, a firm that receives a food on the Food Traceability List and then transforms and ships it would be required to keep records of KDEs relevant to the receiving, transforming, and shipping events.

The proposed KDE/CTE recordkeeping requirements would require the person performing the relevant CTE to establish and maintain records containing and linking the

food's traceability lot code to the KDEs that must be kept. As discussed in sections III.B and IV.D.1, lot codes play a critical role in linking a food to events in the food's supply chain, allowing firms and regulators to identify and verify the movement of a food throughout its supply chain to facilitate traceback and traceforward operations. For this reason, it is critical that firms maintain records, such as purchase orders and BOLs, that indicate a food's traceability lot code and link it to other information about the food.

For the most part, the proposed requirements related to KDEs associated with CTEs in a food's supply chain reflect tracing practices in use by many, though not all, sectors and individual firms in the food industry. We believe that firms' compliance with the proposed requirements would substantially improve our ability to understand how and where potentially harmful foods have moved in the supply chain and facilitate removal of such foods from the market.

1. Records of Growing a Food on the Food Traceability List (Proposed § 1.1325)

Proposed § 1.1325 answers the question, ''What records must I keep when I grow a food on the Food Traceability List?'' We propose to require persons who grow foods on the Food Traceability List (*e.g.,* certain fruits and vegetables) to establish and maintain records on certain matters related to the growing of the food because they are the persons most likely to have certain information that is critical for traceability of the foods. We note that, in addition to these requirements for records of the growing of listed foods, farms are also subject to the proposed recordkeeping requirements applicable to the shipment of listed foods, which are discussed later in this document. Furthermore, farms would be subject to the proposed recordkeeping requirements for the receipt and transformation of listed foods, when applicable, as discussed later in this document.

For each food on the Food Traceability List grown, proposed § 1.1325 would require the grower of the food to establish and maintain records containing and linking the traceability lot code of the food to the following information:

- The growing area coordinates (proposed § 1.1325(a)); and
- for growers of sprouts, the following information (if applicable):
  - The location identifier and location description of the grower of seeds for sprouting, the associated seed lot code assigned by the seed grower, and the date of seed harvesting (proposed § 1.1325(b)(1));
  - the location identifier and location description of the seed conditioner or processor, the associated seed lot code assigned by the seed conditioner or processor, and the date of conditioning or processing (proposed § 1.1325(b)(2));
  - the location identifier and location description of the seed packinghouse (including any repackers, if applicable), the associated seed lot code assigned by the seed packinghouse, and the date of packing (and of repacking, if applicable) (proposed § 1.1325(b)(3));
  - the location identifier and location description of the seed supplier (proposed § 1.1325(b)(4));
  - a description of the seeds, including the seed type or taxonomic name, growing specifications, volume, type of packaging, and antimicrobial treatment (proposed § 1.1325(b)(5));
  - the seed lot code assigned by the seed supplier, including the master lot and sub-lot codes, and any new seed lot code assigned by the sprouter (proposed § 1.1325(b)(6));
  - the date of receipt of the seeds by the sprouter (proposed § 1.1325(b)(7)); and
  - for each seed lot code received by the sprouter, the sprout traceability lot code(s) and the date(s) of production associated with that seed lot code (proposed § 1.1325(b)(8)).

a. Growing Area Coordinates (Proposed § 1.1325(a))

Proposed § 1.1325(a) would require persons who grow a listed food to keep a record linking each traceability lot of the food to the growing area coordinates for that lot. Many farms are in rural locations that lack street addresses; in addition, many farms have multiple fields in which the same commodity is grown. FDA often requests growing area coordinates for foods under investigation to more precisely identify the place where the food was grown and to determine proximity to other farms that have been identified in the investigation. To meet this requirement to record growing area coordinates, farms typically would maintain the GPS coordinates for the entrance of the specific field or ranch where the food was grown. This information allows us to pinpoint the source of the food more specifically than would be possible with the address information for the farm. For example, in a 2018 traceback investigation of leafy greens, firms provided GPS coordinates for the locations at which the greens were grown, enabling us to triangulate the farms and narrow the focus of the investigation to a limited number of farms.

b. Information on Seeds for Sprouting (Proposed § 1.1325(b))

Because sprouts pose unique food safety concerns, as reflected in the special provisions for sprouts in the produce safety regulations (subpart M of part 112) (see, *e.g.,* 78 FR 3504 at 3594 to 3595 (January 16, 2013); 80 FR 74354 at 74496 to 74497 (November 27, 2015)), proposed § 1.1325(b) would require growers of sprouts to keep records linking the traceability lot code for each lot of sprouts to certain information about the grower and supply chain of the seeds they use for sprouting. (By ''seeds'' we mean everything sprouted to produce sprouts for human consumption, including beans.) Seeds have been the underlying source of contamination in numerous sprout outbreaks (Refs. 23 and 24). Although FDA encourages sprout operations to use seed that was grown according to good agricultural practices (GAPs), this does not always occur. Most seeds produced in the United States are used as planting stock to produce forages for livestock or for field cultivation. Such seeds are generally not grown according to GAPs, and may be grown, conditioned/processed, harvested, and/or stored under conditions where contamination is likely to occur. These seeds are sometimes diverted to be used for sprouting, which can create a risk to the public health. Contaminated seed represents a particular food safety issue for sprouts because the conditions under which sprouts are produced (time, temperature, water activity, pH, and available nutrients) are also ideal for the growth of pathogens, if present.

During sprout-related outbreak investigations, FDA frequently has been unable to obtain information needed to determine the scope of potentially affected sprouts and take action against firms that sold adulterated seeds or processed, packed, or re-packed seeds in a way that might result in adulterated product. Requiring sprout growers to keep records identifying seed growers, processors, packers, repackers, and suppliers (proposed § 1.1325(b)(1) through (4)) would provide the Agency with information needed to avoid these hurdles as well as help us conduct outbreak follow-up activities that would aid in preventing future outbreaks. Similarly, requiring sprout growers to keep records on seed lot codes assigned by seed harvesters, conditioners, processors, and repackers, along with the dates of seed harvesting, conditioning, processing, and repacking (proposed § 1.1325(b)(1) through (3)),

would help us scope a sprout recall event and identify the seed lot used to grow the sprouts involved in a contamination event.

The description of the seeds the sprout grower used, as required under proposed § 1.1325(b)(5), includes the seed type or taxonomic name, growing specifications, volume, type of packaging, and antimicrobial treatment. Examples of growing specifications could include production in accordance with GAP standards and/or FDA's draft guidance for industry on ''Reducing Microbial Food Safety Hazards in the Production of Seed for Sprouting'' (Ref. 25), certification under USDA's Seeds for Sprouting Export Certification Program, information on seed purity or germination rate, and whether the seeds are organic or conventionally grown. Antimicrobial treatment refers to treatment of seeds or beans conducted by a grower, distributor, or supplier of the seeds or beans using a scientifically valid method to reduce microorganisms of public health significance. If seeds are not grown to any growing specifications or antimicrobial treatments are not used, that information should be included as part of the description.

Sprout growers would also be required to keep records of the lot codes for the seeds used for sprouting (including the master lot and sub-lot codes assigned by the seed supplier and any new seed lot code assigned by the sprouter) (proposed § 1.1325(b)(6)), the date of receipt of seeds by the sprouter (proposed § 1.1325(b)(7)), and sprout traceability lot codes for the sprouts produced from each lot of seeds received by the sprouter (and the dates of production) (proposed § 1.1325(b)(8)). Having information to identify incoming seed lots, any changes to seed lot codes, and outgoing sprout lots would greatly improve our ability to trace sprout-related foodborne illness outbreaks to their source.

2. Records To Be Kept by First Receivers of Foods on the Food Traceability List (Proposed § 1.1330)

Proposed § 1.1330 answers the question, ''What records must I keep when I am the first receiver of a food on the Food Traceability List?'' As stated in section V.C.3, a first receiver of a food is the first person (other than a farm) who purchases and takes physical possession of a listed food. Examples of first receivers could include manufacturers, processors, buyers of seafood from fishing vessels, and distribution centers. Only listed foods that are originated (*i.e.,* grown, harvested (if a non-produce commodity), raised, or caught) would have a first receiver. As stated in section V.C.3, when a food on the Food Traceability List is created exclusively from ingredients that are not on the Food Traceability List, the first person who purchases and takes physical possession of the food would not be a first receiver. In other words, when a listed food is created, rather than originated, there would not be a first receiver.

We are proposing to establish the term ''first receiver'' of a food on the Food Traceability List and to require that first receivers keep certain records of their receipt (in addition to the receiving records they are required to keep under proposed § 1.1335) because a first receiver is the person who is best positioned to maintain comprehensive information about the origination and subsequent handling of a food. This includes information identifying the persons who originated, harvested, cooled, and packed the food. The foods on the Food Traceability List include foods in several different commodity types with varying growing and production practices and associated business relationships. For some foods, firms that conduct on-farm production and handling activities may not own the food and may not be well-positioned to maintain the necessary records. Furthermore, on-farm activities can involve movement of a food between different entities (*e.g.,* growers, harvesters, coolers) without sale of the food, and the relevant business relationships can be complex. Identifying the first receiver of a food as the first person who purchases and takes physical possession of the food ensures that comprehensive records relating to the origination and handling of the food are maintained by a single person who both owns and possesses the food.

Because unique tracing information is relevant for seafood products obtained from fishing vessels, we are proposing to adopt separate recordkeeping requirements for: (1) First receivers of foods on the Food Traceability List other than food produced through the use of a fishing vessel (proposed § 1.1330(a)) and (2) first receivers of listed seafood products obtained from fishing vessels (proposed § 1.1330(b)), as discussed in the following paragraphs.

a. First Receivers of Food (Other Than Food Produced Through the Use of a Fishing Vessel) (Proposed § 1.1330(a))

Proposed § 1.1330(a) would require each first receiver of a food on the Food Traceability List (except first receivers of food produced through the use of a fishing vessel, as addressed in proposed § 1.1330(b)) to establish and maintain records, in addition to the records of receipt of foods required under proposed § 1.1335 (discussed in section V.F.3), containing and linking the traceability lot code of the food received to the following information:

- The location identifier and location description of the originator of the food (proposed § 1.1330(a)(1));
- the business name, point of contact, and phone number of the harvester of the food, and the date(s) and time(s) of harvesting (proposed § 1.1330(a)(2));
- the location identifier and location description of the place where the food was cooled, and the date and time of cooling (if applicable) (proposed § 1.1330(a)(3)); and
- the location identifier and location description of the place where the food was packed, and the date and time of packing (proposed § 1.1330(a)(4)).

Maintenance of these records by first receivers of a listed food will help prevent delays in determining who grew and physically handled a product by alleviating the initial need to visit each entity performing farm activities. In addition, requiring first receivers to keep this information could help identify precisely where originating and handling activities occurred. In some cases, a food might undergo several handling steps (*e.g.,* cooling, packing) at different locations before the first receiver takes physical possession of the food. Sometimes all these activities are conducted by the originator of the food (*e.g.,* the farm that grew it), but in some cases other firms harvest, cool, and/or pack the food with or without taking ownership of it. During outbreak investigations, FDA has experienced delays in determining who was responsible for handling the contaminated product identified in a traceback because the documents available to us did not accurately indicate who conducted different activities with the product. Given the wide variety of business models used in the farming community, we believe it will be most efficient to have the first non-farm entity that has purchased and taken physical possession of a listed food—*i.e.,* the first receiver—maintain the tracing information provided by the farm(s) that originated and handled the product.

With respect to the location description for the cooler of a food, when a food has been cooled by a portable cooler, the first receiver of the food could satisfy the requirement in proposed § 1.1330(a)(3) by keeping a record of the location description for the headquarters of the firm that performed

the cooling. In this case, the physical location name would be the words identifying the portable cooler (*e.g.,* ''Cooler No. 17'').

As noted above, not all of the proposed requirements would apply to every first receiver of a listed food. For example, not all foods undergo cooling before the first receiver takes possession of the food.

b. First Receivers of Food Produced Through Use of a Fishing Vessels (Proposed § 1.1330(b))

Proposed § 1.1330(b) would require each first receiver of a seafood product on the Food Traceability List that was produced through use of a fishing vessel to establish and maintain records, in addition to the records of receipt of foods required under proposed § 1.1335 (discussed in section V.F.3), containing and linking the traceability lot code of the seafood product received to the harvest date range and locations (National Marine Fisheries Service Ocean Geographic Code or geographical coordinates) for the trip during which the seafood was caught. Compliance with these requirements by first receivers of seafood from fishing vessels would facilitate traceback efforts by helping us more quickly identify physical locations and date ranges that might be linked to a foodborne illness outbreak involving a seafood product.

c. Establishment of Traceability Lot Codes (Proposed § 1.1330(c))

Proposed § 1.1330(c) would require a first receiver of a food on the Food Traceability List to which the originator of the food has not assigned a traceability lot code to establish a traceability lot code for the food and maintain a record of the traceability lot code linked to the information specified in proposed § 1.1330(a) or (b) (as applicable to the type of food received). Although originators of food would be required to establish and assign a traceability lot code to the food under proposed § 1.1320(a), not all originators would be subject to the rule. For example, certain small farms, small shell egg producers, and other small originators of food would be exempt from subpart S under proposed § 1.1305(a). Because we believe it is critical that a traceability lot code is assigned to a food as early in its supply chain as possible, we propose to require first receivers of listed foods to establish a traceability lot code for the food when the food's originator has not done so. For example, by establishing a traceability lot code for seafood produced from a fishing vessel that lacked such a lot code, the first receiver of the seafood would facilitate traceback and traceforward operations to remove contaminated seafood from the market.

3. Records for Receipt of Foods on the Food Traceability List (Proposed § 1.1335)

Proposed § 1.1335 answers the question, ''What records must I keep when I receive a food on the Food Traceability List?'' Consistent with the existing subpart J regulations and common industry practice, we propose to require persons who receive foods on the Food Traceability List to keep certain records documenting this critical tracking event for the foods. We propose that, for each food on the Food Traceability List that is received, the receiver must establish and maintain records containing and linking the traceability lot code for the food to the following information:

- The location identifier and location description for the immediate previous source (other than a transporter) of the food (proposed § 1.1335(a));
- the entry number assigned to the food (if the food was imported) (proposed § 1.1335(b));
- the location identifier and location description of where the food was received, and date and time the food was received (proposed § 1.1335(c));
- the quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds) (proposed § 1.1335(d));
- the traceability product identifier and traceability product description for the food (proposed § 1.1335(e));
- the location identifier, location description, and point of contact for the traceability lot code generator (proposed § 1.1335(f));
- the reference record type(s) and reference record number(s) (*e.g.,* ''Invoice 750A,'' ''BOL 042520 XYX'') for the document(s) containing the information specified in proposed § 1.1335(a) through (f) (proposed § 1.1335(g)); and
- the name of the transporter who transported the food to the receiver (proposed § 1.1335(h)).

Information linking the lot code for a received food with the immediate previous source of the food, the entry number (for an imported food), the location and date the food was received, and the quantity and unit of measure of the food received (proposed § 1.1335(a) through (d)) is widely regarded in the food industry as essential for effective tracing of food. For imported foods, knowing the entry number assigned to a food by U.S. Customs and Border Protection (who assigns the first three alphanumeric digits of a food's entry number) and the food's filer/broker (who assigns the remaining parts of the entry number) can help FDA identify the shipper of an imported food, such as the foreign farm that grew imported produce. We note that if an imported food is subsequently transformed (as discussed in section V.E.4 of this document), the resulting food is not regarded as being imported, and the receiver of the food produced through transformation would not be required to keep a record of the entry number for any imported food that is a component of such food.

Although subpart J only requires receivers of food who manufacture, process, or pack food to record the lot code for the food ''to the extent this information exists'' (§ 1.337(a)(4)), we believe that all persons who receive listed foods should keep a record of the food's traceability lot code because lot codes provide important tracing information that can link received food not just to manufacturers/processors and packers but also to others in the supply chain who receive the food, including distributors and retail food establishments. In addition, although it is not required under § 1.337(a)(3) (the provision in subpart J that requires receivers of foods to keep a record of the date of receipt), we believe that the time of receipt (proposed § 1.1335(c)) also is needed to more precisely identify foods that might be implicated in a foodborne illness outbreak, given that many firms receive multiple shipments of different food products each day.

We propose to require receivers of listed foods to maintain the traceability product identifier and traceability product description for each listed food they receive (proposed § 1.1335(e)) because this would provide descriptive information about the food to which the traceability lot code was assigned. For example, the originator (grower) of a lot of papayas might describe them as Maradol papayas or assign to the lot an identification code that the grower uses for papayas of this type. The availability of such product information would help prevent confusion during traceback investigations in situations in which a subsequent firm in the supply chain uses a different product identifier for the food. In addition, having information on the location of the person who generated the traceability lot code (proposed § 1.1335(f)) would provide another way of confirming that a traceability lot code applies to a particular food, as well as help the Agency identify the previous point in the supply chain that transformed, created, or originated the food (and generated the lot code for the food).

Information on the reference record (specific type and number) associated with receipt of a listed food (proposed § 1.1335(g)) would provide important documentation of receipt. As stated in section V.C.23, a reference record is a record used to identify an event in a food's supply chain; reference records commonly used to document receipt of a food include BOLs, invoices, sale receipts, and ASNs. Although keeping a reference record for receipt of a food is not required under subpart J, many firms do retain reference records, and we typically request reference records in our traceback investigations. We believe maintaining reference records for receipt of foods provides an important ''cross-check'' of relevant traceability lot codes as a food moves between supply chain partners.

Consistent with the subpart J requirements, we propose to require persons who receive listed foods to keep a record of the name of the transporter who delivered the food (proposed § 1.1335(h)). However, we believe it is not necessary for the receiver to retain other information on the transporter (*e.g.,* address, telephone number). We note that in many cases, the receiver will have this information as a result of subpart J requirements (see § 1.337(a)(6)).

As stated in section V.E.2, in addition to meeting the requirements for ''first receivers'' of listed foods stated in proposed § 1.1330, the first receiver of a listed food would be required to establish and maintain records of receipt for the food in accordance with proposed § 1.1335.

4. Records of Transformation of Foods on the Food Traceability List (Proposed § 1.1340)

Proposed § 1.1340 answers the question ''What records must I keep when I transform a food on the Food Traceability List?'' As previously stated, transformation of a food, such as by processing it or combining it with other foods to make a new food product, is another critical event in product tracing. Foods (and their packaging and labeling) can be changed in a variety of ways, such as by cutting, cooking, commingling, boiling, mixing, freezing, milling, repacking, and repackaging. Documentation of transformation is needed to ensure traceability between the food that is changed during transformation and the resulting new product.

Transformation of a food on the Food Traceability List involves taking a listed food and changing the food (or its packaging and/or labeling) such as by processing it, combining it with other ingredients, commingling it, or repackaging it. For example, processing whole head lettuce (a listed food) for inclusion in a bagged salad mix would involve transformation of the lettuce. We propose to require firms that transform listed foods to keep certain records of the transformation. However, we propose that this requirement would not apply to retail food establishments with respect to the listed foods they sell directly to consumers, as discussed in the following paragraphs.

Except as specified in proposed § 1.1340(b), proposed § 1.1340(a) would require, for each new traceability lot of food produced through transformation of foods on the Food Traceability List, that the person who transforms the food establish and maintain records containing and linking the traceability lot code of the food transformed to certain information regarding: (1) The food on the Food Traceability List used in transformation and (2) the food produced through transformation. For the food(s) on the Food Traceability List used in transformation (proposed § 1.1340(a)(1)), the transformer of the food must establish and maintain records containing and linking the traceability lot code of the food to the following information:

- The traceability lot code(s) for the food (proposed § 1.1340(a)(1)(i));
- the traceability product identifier and traceability product description for the foods to which the traceability lot code applies (proposed § 1.1340(a)(1)(ii)); and
- the quantity of each traceability lot of the food(proposed § 1.1340(a)(1)(iii)).

For the food produced through transformation (proposed § 1.1340(a)(2)), the transformer of the food must establish and maintain records containing and linking the traceability lot code of the food to the following information:

- The location identifier and location description for where the food was transformed (*e.g.,* by a manufacturing/processing step), and the date the transformation was completed (proposed § 1.1340(a)(2)(i));
- the new traceability product identifier and traceability product description for the food produced through transformation to which the new traceability lot code applies (proposed § 1.1340(a)(2)(ii)); and
- the quantity and unit of measure of the food produced through transformation for each new traceability code (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds) (proposed § 1.1340(a)(2)(iii)).

In addition to this information on foods used in transformation and foods produced through transformation, the transformer of a listed food would have to establish and maintain records containing and linking the new traceability lot code for the food produced through transformation to the reference record type(s) and reference record number(s) (*e.g.,* ''Production Log 123,'' ''Batch Log 01202021'') for the documents containing the information specified in proposed § 1.1340(a)(1) and (2) (proposed § 1.1340(a)(3)).

The traceability lot code, traceability product identifier and traceability product description, and the quantity of each traceability lot for the food that is to be transformed (proposed § 1.1340(a)(1)(i) through (iii)) all provide important data linking the food produced through transformation to products the transforming firm has received from its suppliers. With respect to the food that has undergone transformation, the transformer of the food would have to keep information on the location and date the transformation was completed, the new traceability product identifier and traceability product description, and the quantity and unit of measure of the food produced through transformation (proposed § 1.1340(a)(2)(i) through (iii)). Finally, the transformer of a listed food would keep the reference record type (such as a production log) and reference record number that links the food produced through transformation with the listed food that was received and transformed (proposed § 1.1340(a)(3)). These proposed recordkeeping requirements for the transformation of listed foods would help ensure that vital tracing information linking a food produced through transformation to the incoming food that was subjected to transformation is available for review in a traceback investigation.

Most firms can provide information about what lots of product were available for potential use during the transformation or manufacturing process. However, some firms currently lack the ability to connect the finished transformed product to its ingredients and the amount of each ingredient lot used during the transformation. Depending on the quantity of food in an ingredient lot, one lot could be used for multiple days of production and commingled with other lots of the same ingredient. An inability to precisely identify ingredient lots used in transformation could adversely affect a traceback or recall by limiting our ability to accurately identify the products within the scope of such action. We believe that compliance with the proposed recordkeeping requirements for transformation of foods

will substantially improve traceability for these foods.

As previously stated, we propose to exempt retail food establishments (under certain circumstances) from this proposed requirement to keep records of transformation of listed foods. Proposed § 1.1340(b) would provide that proposed § 1.1340(a) would not apply to retail food establishments with respect to foods they do not ship (*e.g.,* foods they sell or send directly to consumers). As previously stated, we do not believe it is reasonable to expect restaurants, grocery stores, and other retail food establishments to keep traceability records of their sales of food to consumers. We believe that a similar exemption from recordkeeping requirements should apply when retail food establishments transform food they then sell directly to consumers (or that they donate or dispose of, if it is not sold). We would still be able to trace the movement of listed foods to retail food establishments from farms, manufacturers, distributors, and others because retail food establishments will be required, under proposed § 1.1335, to keep records on listed foods they receive.

However, this proposed exemption for retail food establishments would not apply when an establishment transforms a listed food it then ships to a distributor or another retail food establishment instead of selling the food directly to consumers. Because a retail food establishment that transforms a food and ships it to another business (rather than to consumers) would be functioning as a manufacturer, it is necessary and appropriate for effective traceability that such a retail food establishment be required to keep tracing records of the transformation in accordance with proposed § 1.1340(a).

5. Records of Creation of Foods on the Food Traceability List (Proposed § 1.1345)

Proposed § 1.1345 answers the question, ''What records must I keep when I create a food on the Food Traceability List?'' Creating a food on the Food Traceability List is a critical tracking event. Creation of a food on the Food Traceability List involves making or producing a listed food (such as through manufacturing or processing) using only ingredients that are *not* on the Food Traceability List. For example, manufacturing peanut butter, which is on the Food Traceability List, would constitute creating a listed food because none of the ingredients of peanut butter are listed foods. Because listed foods are not used in the creation (as opposed to transformation) of a listed food, and we therefore cannot expect that firms will necessarily have relevant records for any of the ingredients in a created food, it is appropriate to apply different recordkeeping requirements to transformation and creation events.

We propose to require firms that create listed foods to keep tracing records of the creation, with a partial exemption for retail food establishments as proposed for transformation of listed foods. Therefore, except as specified in proposed § 1.1345(b), proposed § 1.1345(a) would require a person who creates a food on the Food Traceability List to establish and maintain records containing and linking the traceability lot code of the food created to the following information:

- The location identifier and location description for where the food was created (*e.g.,* by a manufacturing/processing step), and the date creation was completed (proposed § 1.1345(a)(1));
- the traceability product identifier and traceability product description for the food (proposed § 1.1345(a)(2));
- the quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds) (proposed § 1.1345(a)(3)); and
- the reference record type(s) and reference record number(s) (*e.g.,* ''Production Lot 123,'' ''Batch Log 01202021'') for the document(s) containing the information specified in proposed § 1.1345(a)(1) through (3) (proposed § 1.1345(a)(4)).

Because creation of a food on the Food Traceability List does not involve the use of any listed foods as ingredients, the creator of a listed food would not be required to maintain tracing records on the ingredients used to create the listed food. Instead, the creator of the food would only have to keep records providing information on the created food, including the location and date of creation, the traceability lot code, the traceability product identifier and product description, the quantity and unit of measure for each traceability lot code, and the reference record type and number for the created food. Although such records would not by themselves provide full traceability (because the product is made from foods not on the list), they would provide the principal information needed to trace the created food through the rest of the supply chain.

For the reasons discussed in section V.F.4, proposed § 1.1345(b) would provide that the requirement to establish and maintain records on the creation of listed foods would not apply to retail food establishments with respect to foods they do not ship (*e.g.,* foods they sell or send directly to consumers).

6. Records To Be Kept and Sent for Shipment of Foods on the Food Traceability List (Proposed § 1.1350)

Proposed § 1.1350 answers the question, ''What records must I keep and send when I ship a food on the Food Traceability List?'' Shipment or release of foods from one person in the supply chain to another is widely recognized as a critical tracking event. As with records of receipt of foods, maintaining tracing records of shipment of foods to others in the supply chain is common industry practice and required under the subpart J regulations. Therefore, we propose to require persons who ship foods on the Food Traceability List to keep certain records documenting these shipments. In addition, to help ensure that those who receive listed foods obtain the information they would be required to keep under the proposed rule, we propose to require persons who ship listed foods to provide their customers with certain information related to the foods they ship, as this information might not always be provided under current commercial practices.

a. Records of Shipment (Proposed § 1.1350(a)).

Proposed § 1.1350(a) would require persons who ship a food on the Food Traceability List to establish and maintain records containing and linking the traceability lot code for the food to the following information:

- The entry number(s) assigned to the food (if the food is imported) (proposed § 1.1350(a)(1));
- the quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds) (proposed § 1.1350(a)(2));
- the traceability product identifier and traceability product description for the food (proposed § 1.1350(a)(3));
- the location identifier, location description, and point of contact for the traceability lot code generator (proposed § 1.1350(a)(4));
- the location identifier and location description for the immediate subsequent recipient (other than a transporter) of the food (proposed § 1.1350(a)(5));
- the location identifier and location description for the location from which the food was shipped, and the date and time the food was shipped (proposed § 1.1350(a)(6));
- the reference record type(s) and reference record number(s) (*e.g.,* ''BOL No. 123,'' ''ASN 10212025'') for the document(s) containing the information

specified in proposed § 1.1350(a)(1) through (6) (proposed § 1.1350(a)(7)); and

- the name of the transporter who transported the food from the shipper (proposed § 1.1350(a)(8)).

The records we propose to require shippers of listed foods to keep are similar to the records that receivers of food would have to keep, except that rather than information on an incoming food, its source, and the place and date it was received, the shipper would keep information on the food it sent out, the recipient of the food, and the date of shipment and location from which the food was shipped. As with the requirements for receivers of food, if an imported food is subsequently transformed, a shipper of the food produced through transformation would not be required to keep (or send forward) a record of the entry number for any imported food that is a component of such food.

As described in proposed § 1.1320, there are circumstances in which the shipper would be required to establish and assign the traceability lot code for the shipped food. In all other circumstances, the traceability lot code would be the code assigned by a previous entity in the food's supply chain, which could be the immediate previous source of the food or a person several steps previous in the supply chain.

b. Records To Be Sent to Recipients of the Food (Proposed § 1.1350(b))

In many cases, persons who would be required under the proposed rule to keep certain records containing key information on events such as receipt and transformation of food either receive or generate this information in the normal course of business, such as in shipping records (*e.g.,* bills of lading, purchase orders) and production records (*e.g.,* batch logs, work orders, repack logs). However, as previously stated, in some circumstances firms such as manufacturers, distributors, and retailers may not always have all the information on foods they receive that we believe is essential for ensuring traceability of the foods throughout the supply chain. For example, some reference records will state a firm's post office box number but not identify the location where the food was handled. During a recent outbreak, FDA was delayed in gathering records from a distributor because the records available to us from the retailer of the food listed a home address of the distributor rather than the address of the physical location of the firm. This lack of critical tracing information can result in significant delays in completing a traceback investigation.

For this reason, proposed § 1.1350(b) would require persons who ship a food on the Food Traceability List to send records (in electronic or other written form) containing the following information to the immediate subsequent recipient (other than a transporter) of each traceability lot shipped:

- The information in proposed § 1.1350(a)(1) through (6) (*i.e.,* traceability lot code, quantity and unit measure of food shipped for each traceability lot code, traceability product identifier and traceability product description, information on the traceability lot code generator, location identifier and location description for the immediate subsequent recipient, and location identifier and location description for the place of shipment) (proposed § 1.1350(b)(1)); and
- if the shipper is a farm, the following information (if applicable) for each traceability lot of the food:
  - A statement that the shipper is a farm (proposed § 1.1350(b)(2)(i));
  - the location identifier and location description of the originator of the food (if not the shipper) (proposed § 1.1350(b)(2)(ii));
  - the business name, point of contact, and phone number of the harvester of the food (if not the shipper), and the date(s) and time(s) of harvesting (proposed § 1.1350(b)(2)(iii));
  - the location identifier and location description of the place where the food was cooled (if not by the shipper), and the date and time of cooling (proposed § 1.1350(b)(2)(iv)); and
  - the location identifier and location description of the place where the food was packed (if not by the shipper), and the date and time of packing (proposed § 1.1350(b)(2)(v)).

Shippers of listed foods would have to send the information in proposed § 1.1350(b) to the recipients of the food in electronic or other written form. We would encourage firms to send the information electronically, such as in an email to their customer or an ASN, but shippers could elect to send the information in other written form, such as by mailing paper documents or including the information on the documents that accompany the shipment, such as the BOL.

We believe it is necessary to require shippers of listed foods to send their customers the information in proposed § 1.1350(a)(1) through (6) (*i.e.,* traceability lot code, quantity of food shipped and unit measure of food shipped for each traceability lot code, traceability product identifier and product description, information on the traceability lot code generator, location identifier and location description for the immediate subsequent recipient, and location identifier and location description for the place of shipment) because, as previously noted, this information is not always provided by firms to their customers under current businesses practices. Because we need to be able to review this information when we visit such a customer during a tracing investigation involving a listed food, we propose to require that shippers provide this information to their customers.

We are proposing the additional information disclosure requirements for shippers who are farms because we propose to require that the first receiver of a food on the Food Traceability List (*i.e.,* the first person other than a farm who purchases and takes physical possession of the food) maintain this information, and we understand that not all farms routinely provide this information to firms that buy food from the farms. Therefore, we believe it is appropriate to require farms to provide information on the origination (if not by the farm), harvesting, cooling, and packing of the food (if applicable) when they ship the food.

In situations where food is sold from one farm to a second farm before being sold to a first receiver, this system would allow for all of the necessary information to reach the first receiver, even if some of the activities (*e.g.,* origination and harvesting) took place on the first farm, while others (*e.g.,* cooling and packing) took place on the second farm. In that situation, the first farm would be obligated under proposed § 1.1350(b)(1) to send information about their location to the second farm, and they would be obligated under proposed § 1.1350(b)(3)(iii) to send the second farm information about the date and time of harvesting. This would allow the second farm to fulfill its obligation under proposed § 1.1350(b)(2)(ii) and (iii) to send the first receiver information about the originator of the food and the date and time of harvesting. Moreover, the statement that the sender is a farm would allow the first receiver to recognize its status as a first receiver of a listed food, which might not otherwise be clear in this situation, where the second farm did not originate the food but nonetheless is a farm as defined in proposed § 1.1310.

F. Special Requirements for Foods Subjected to a Kill Step (Proposed § 1.1355)

We are proposing to adopt special recordkeeping requirements for foods on the Food Traceability List that are subjected to a kill step to more appropriately address traceability issues associated with these foods. Proposed § 1.1355 answers the question, ''What recordkeeping requirements apply to foods on the Food Traceability List that are subjected to a kill step?'' We recognize that applying a kill step to a food can reduce the food's potential to harm public health by significantly minimizing the presence of pathogens in the food. Adequately applying a kill step to a food on the Food Traceability List could potentially reduce the risk posed by the food and reduce the likelihood that the food would be involved in an outbreak, thereby reducing the need for further tracing of that food. Therefore, proposed § 1.1355(a) would provide that if a person applies a kill step to a food on the Food Traceability List, the proposed subpart S recordkeeping requirements would not apply to that person's subsequent shipping of the food, provided that the person maintained a record of application of the kill step. We anticipate that many manufacturers/processors would be able to use records required under existing regulations, such as those requiring documentation of monitoring of a preventive control (see § 117.190(a)(2)) or documentation of thermal processing of low-acid canned foods (LACF) (see 21 CFR 113.100 (§ 113.100)), to meet the requirement to document application of the kill step to the food. In addition, proposed § 1.1355(b) would specify that if a person receives a food on the Food Traceability List that has been subjected to a kill step, the proposed recordkeeping requirements would not apply to that person's receipt or subsequent transformation and/or shipping of the food.

As an example of application of these proposed provisions, consider the production of canned sardines. A manufacturer of canned sardines would be required to maintain records of receipt of the sardines under proposed § 1.1335 (assuming sardines are on the Food Traceability List at the time, as they are now), and the manufacturer would have to maintain records of transformation of the sardines under proposed § 1.1340(a) because it processes the sardines (including by canning them). These records would include the new traceability lot code that the manufacturer would be required to assign to the canned sardines under proposed § 1.1320(a) (see proposed § 1.1340(a)(6)). However, under proposed § 1.1355(a), the manufacturer would *not* be required to maintain tracing records of shipment of the canned sardines (as otherwise would be required under proposed § 1.1350) provided that the manufacturer maintained a record of its application of the kill step to the sardines. The requirement to maintain records documenting the kill step could be fulfilled using records that are already required under the regulations on LACF (part 113) and hazard analysis and critical control point operations for seafood (21 CFR part 123). Documentation of the kill step would have to be maintained for 2 years, in accordance with proposed § 1.1460(c). In addition, under proposed § 1.1355(b), because the kill step had been applied, the manufacturer's customer and subsequent persons in the supply chain would not be required to maintain any records required under proposed subpart S regarding receipt, transformation, or shipment of the canned sardines. However, both the manufacturer and subsequent persons in the supply chain would still need to maintain any records that are required of them under the subpart J regulations.

G. Procedures for Modified Requirements and Exemptions (Proposed §§ 1.1360 to 1.1400)

The proposed rule includes provisions allowing the Agency to modify the recordkeeping requirements applicable to certain foods or types of entities, or to exempt foods or types of entities from the requirements, under certain circumstances. Section 204(d)(6)(E) of FSMA states that FDA may, by notice in the **Federal Register**, modify the recordkeeping requirements applicable to a food or type of facility under section 204(d), or exempt a food or type of facility from these requirements, if we determine that product tracing requirements for such food or type of facility are not necessary to protect the public health. However, section 204(d)(6)(E) and (F) of FSMA also provide that, in situations where such modification or exemption applies, if the person who manufactures, processes, packs, or holds the food is required to register with FDA under section 415 of the FD&C Act with respect to the manufacturing, processing, packing, or holding of the food, we shall require the person to maintain records that identify the immediate previous source of the food and the immediate subsequent recipient of the food.

The following paragraphs discuss our proposed procedures for adopting exemptions from, and modifications to, the proposed traceability recordkeeping requirements for particular foods or types of entities.

1. Circumstances Under Which FDA Will Modify Requirements or Grant Exemptions (Proposed § 1.1360)

Proposed § 1.1360 answers the question, ''Under what circumstances will FDA modify the requirements in this subpart that apply to a food or type of entity or exempt a food or type of entity from the requirements of this subpart?'' Proposed § 1.1360(a) would specify that, except as stated in proposed § 1.1360(b), FDA will modify the requirements of subpart S applicable to a food or type of entity, or exempt a food or type of entity from subpart S, when we determine that application of the requirements that would otherwise apply to the food or type of entity is not necessary to protect the public health.

Under proposed § 1.1360(b), if a person to whom modified requirements or an exemption applies under § 1.1360(a) (including a person who manufactures, processes, packs, or holds a food to which modified requirements or an exemption applies under § 1.1360(a)) is required to register with FDA under section 415 of the FD&C Act (and in accordance with subpart H) with respect to the manufacturing, processing, packing, or holding of the applicable food, such person must maintain records identifying the immediate previous source of such food and the immediate subsequent recipient of such food in accordance with §§ 1.337 and 1.345. Proposed § 1.1360(b) further states that such records would have to be maintained for 2 years, consistent with the record retention requirement we are proposing for subpart S records (see section V.H.3).

2. Means by Which FDA Will Consider Whether To Adopt Modified Requirements or Grant Exemptions (Proposed § 1.1365)

Proposed § 1.1365 answers the question, ''How will FDA consider whether to adopt modified requirements or grant an exemption from the requirements of this subpart?'' Proposed § 1.1365 would provide that we will consider modifying subpart S requirements applicable to a food or type of entity, or exempting a food or type of entity from these requirements, on our own initiative or in response to a citizen petition submitted under 21 CFR 10.30 (§ 10.30) by any interested party. FDA's citizen petition regulations in § 10.30 provide standardized

procedures for requesting that FDA take (or refrain from taking) an administrative action. A citizen petition may be submitted by any person (including a person who is not a citizen of the United States). Among other things, the citizen petition regulations provide a format for such requests and a procedure under which a docket is created and interested persons may submit comments to the docket regarding the requested action.

3. Requirements for Citizen Petition Requesting Modified Requirements or an Exemption (Proposed § 1.1370)

Proposed § 1.1370 answers the question, ''What must be included in a petition requesting modified requirements or an exemption from the requirements?'' Proposed § 1.1370 would require that, in addition to meeting the requirements on the content and format of a citizen petition in § 10.30, a petition requesting modified requirements or an exemption from the subpart S requirements would have to:

- Specify the food or type of entity to which the modified requirements or exemption would apply (proposed § 1.1370(a));
- if the petition requests modified requirements, specify the proposed modifications to the subpart S requirements (proposed § 1.1370(b)); and
- present information demonstrating why application of the requirements requested to be modified or from which exemption is requested is not necessary to protect the public health (proposed § 1.1370(c)).

4. Public Availability of Information in a Citizen Petition (Proposed § 1.1375)

Proposed § 1.1375 answers the question, ''What information submitted in a petition requesting modified requirements or an exemption, or information in comments on such a petition, is publicly available?'' Proposed § 1.1375 would specify that FDA will presume that information submitted in a petition requesting modified requirements or an exemption, as well as information in comments submitted on such a petition, does not contain information exempt from public disclosure under 21 CFR part 20 (part 20) (FDA's regulations on public information) and would be made public as part of the docket associated with the petition.

5. Process for Citizen Petitions Requesting Modified Requirements or an Exemption (Proposed § 1.1380)

Proposed § 1.1380 answers the question, ''What process applies to a petition requesting modified requirements or an exemption?'' Proposed § 1.1380 would establish a process for FDA's handling of citizen petitions requesting modified requirements or an exemption from subpart S. Proposed § 1.1380(a) would provide that, in general, the procedures in § 10.30 would govern our response to such a petition, and an interested person could submit comments on such a petition in accordance with § 10.30(d). Proposed § 1.1380(b) would specify that, under § 10.30(h)(3), we would publish a notification in the **Federal Register** requesting information and views on a submitted petition, including information and views from persons who could be affected by the modified requirements or exemption if we granted the petition.

Proposed § 1.1380(c) would provide that, under § 10.30(e)(3), we would respond to a petitioner in writing. If we granted the petition either in whole or in part, we would publish a notification in the **Federal Register** setting forth any modified requirements or exemptions and the reasons for them (proposed § 1.1380(c)(1)). If we denied the petition (including a partial denial), our written response to the petitioner would explain the reasons for the denial (proposed § 1.1380(c)(2)).

Proposed § 1.1380(d) states that we will make readily accessible to the public, and periodically update, a list of petitions requesting modified requirements or exemptions, including the status of each petition (for example, pending, granted, or denied). We believe that maintaining such a list would help ensure that all persons who might be affected by or otherwise interested in these petitions have access to information about the status of the petitions.

6. Adopting Modified Requirements or Granting an Exemption on FDA's Own Initiative (Proposed § 1.1385)

Proposed § 1.1385 answers the question, ''What process will FDA follow when adopting modified requirements or granting an exemption on our own initiative?'' Proposed § 1.1385 would establish the procedures we would follow if, on our own initiative, we proposed to adopt modified requirements or grant an exemption from the traceability recordkeeping requirements. Proposed § 1.1385(a) would provide that if we, on our own initiative, determine that adopting modified requirements or granting an exemption from the requirements for a food or type of entity is appropriate, we will publish a notification in the **Federal Register** setting forth the proposed modified requirements or exemption and the reasons for the proposal. The notification will establish a public docket so that interested persons may submit written comments on the proposal. Proposed § 1.1385(b) would provide that, after considering any comments timely submitted, we will publish a notification in the **Federal Register** stating whether we are adopting modified requirements or granting an exemption, and the reasons for our decision.

7. When Modified Requirements and Exemptions Become Effective (Proposed § 1.1390)

Proposed § 1.1390 answers the question, ''When will modified requirements that we adopt or an exemption that we grant become effective?'' Proposed § 1.1390 would provide that any modified requirements that we adopt or exemption that we grant will become effective on the date that notice of the modified requirements or exemption is published in the **Federal Register**, unless otherwise stated in the notification.

8. Circumstances Under Which FDA Might Revise or Revoke Modified Requirements or an Exemption (Proposed § 1.1395)

Proposed § 1.1395 answers the question, ''Under what circumstances may FDA revise or revoke modified requirements or an exemption?'' Proposed § 1.1395 would provide that we may revise or revoke modified requirements or an exemption if we determine that such revision or revocation is necessary to protect the public health. For example, we might conclude that revocation of an exemption was appropriate following the emergence of a significant safety concern (*e.g.,* repeated contamination events) associated with the food or type of entity for which the exemption had been granted.

9. Procedures for Revision or Revocation of Modified Requirements or an Exemption (Proposed § 1.1400)

Proposed § 1.1400 answers the question, ''What procedures apply if FDA tentatively determines that modified requirements or an exemption should be revised or revoked?'' Proposed § 1.1400(a) would provide that if we tentatively determine that we should revise or revoke modified requirements or an exemption, we will provide the following notifications:

- We will notify the person that originally requested the modified requirements or exemption (if we

adopted modified requirements or granted an exemption in response to a petition) in writing at the address identified in the petition (proposed § 1.1400(a)(1)); and

• we will publish in the **Federal Register** a notification of our tentative determination that the modified requirements or exemption should be revised or revoked and the reasons for our tentative decision. The notification will establish a public docket so that interested persons may submit written comments on our tentative determination (proposed § 1.1400(a)(2)).

Under proposed § 1.1400(b), after considering any comments timely submitted, we will publish in the **Federal Register** a notification of our decision whether to revise or revoke the modified requirements or exemption and the reasons for the decision. Proposed § 1.1400(b) further states that if we do revise or revoke the modified requirements or exemption, the effective date of the decision will be 1 year after the date of publication of the notification, unless otherwise stated in the notification.

H. Waivers (Proposed §§ 1.1405 to 1.1450)

In accordance with section 204(d)(1)(I) of FSMA, we propose to establish a process for the issuance of a waiver of the additional traceability recordkeeping requirements in subpart S if we determine that application of the requirements would result in an economic hardship for an individual entity or a type of entity. Under the proposed procedures, a person could request a waiver for an individual entity by submitting a written request to FDA, or a person could request a waiver for a type of entity by submitting a citizen petition to FDA. In addition, we could elect to issue a waiver for an individual entity or a type of entity on our own initiative.

1. Circumstances Under Which FDA Will Waive Requirements (Proposed § 1.1405)

Proposed § 1.1405 answers the question, ''Under what circumstances will FDA waive one or more of the requirements of this subpart for an individual entity or a type of entity?'' Proposed § 1.1405 would provide that we will waive one or more of the subpart S requirements when we determine that all of the following conditions are met:

• Application of the requirements would result in an economic hardship for an individual entity or a type of entity, due to the unique circumstances of the individual entity or type of entity (proposed § 1.1405(a));

• the waiver will not significantly impair our ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act (proposed § 1.1405(b)); and

• the waiver will not otherwise be contrary to the public interest (proposed § 1.1405(c)).

Proposed § 1.1405(a) incorporates the concept of ''economic hardship'' that Congress set forth in section 204(d)(1)(I) of FSMA, while clarifying that such hardship must stem from the unique circumstances of the individual entity or type of entity. Examples of ''unique circumstances'' might include, but are not limited to, issues related to unique business operations or geographical factors. We note that merely having relatively low revenue or relatively few employees would not ordinarily constitute an economic hardship sufficient to qualify for a waiver from the subpart S requirements. As previously discussed, the proposed rule includes exemptions from the subpart S requirements for certain small produce farms, small shell egg producers, and other small originators of food (see section V.B.1), and it would either fully exempt retail food establishments having ten or fewer full-time equivalent employees from the rule (under Option 1 of the co-proposal) or exempt such establishments from the proposed requirement to provide traceability information to FDA in an electronic spreadsheet upon request during situations such as outbreak investigations (under Option 2 of the co-proposal) (see section V.B.7). The waiver process in proposed § 1.1405 is not meant to substitute for the decisions discussed in sections V.B.1 and V.B.7 regarding these proposed exemptions.

Under proposed § 1.1405(b) we would grant a waiver only if doing so would not significantly impair our ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act. In section 204(d)(1) of FSMA, Congress specified rapidly and effectively identifying recipients of a food in such circumstances as the purpose for developing these proposed regulations. Therefore, we propose to adopt, as a condition for granting a waiver, a determination that the waiver would not undermine this central purpose of subpart S. For example, we likely would not grant a waiver to a certain type of entity that processes, distributes, or sells a food on the Food Traceability List if granting the waiver could significantly impair our ability to conduct traceback operations in response to a foodborne illness outbreak involving that food.

Proposed § 1.1405(c) states, as a final condition for a waiver, that the waiver will not otherwise be contrary to the public interest. For example, we might conclude that a waiver for an individual entity would not be appropriate because it might provide an unfair economic advantage over similarly situated firms in a particular sector of the food industry.

We request comment on the proposed criteria for granting a waiver of the proposed recordkeeping requirements and, in particular, what should constitute an economic hardship warranting such a waiver.

2. Mechanisms by Which FDA Will Waive Requirements (Proposed § 1.1410)

Proposed § 1.1410 answers the question, ''How will FDA consider whether to waive a requirement of this subpart?'' Proposed § 1.1410 would provide that we will consider whether to waive a requirement of subpart S on our own initiative or in response to the following:

• A written request for a waiver for an individual entity (proposed § 1.1410(a)); or

• a citizen petition requesting a waiver for a type of entity submitted under § 10.30 by any person subject to the requirements of subpart S (proposed § 1.1410(b)).

For a waiver request regarding an individual entity, we think that a written request to the Agency is sufficient, and the citizen petition process is unnecessary. But for requests that concern a type of entity, we believe that the fact that the waiver could apply to multiple parties, including persons unaware that the waiver request had been submitted, makes it appropriate to require that the request be submitted in a citizen petition.

3. Requesting a Waiver for an Individual Entity (Proposed § 1.1415)

Proposed § 1.1415 answers the question, ''How may I request a waiver for an individual entity?'' Proposed § 1.1415 would provide that a person

may request a waiver of one or more requirements of subpart S for an individual entity by submitting a written request to FDA that includes the following:

- The name, address, and point of contact of the individual entity to which the waiver would apply (proposed § 1.1415(a));
- the requirements of subpart S to which the waiver would apply (proposed § 1.1415(b));
- information demonstrating why application of the requirements requested to be waived would result in an economic hardship for the entity, including information about the unique circumstances faced by the entity that result in unusual economic hardship from the application of these requirements (proposed § 1.1415(c));
- information demonstrating why the waiver will not significantly impair FDA's ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act (proposed § 1.1415(d)); and
- information demonstrating why the waiver would not otherwise be contrary to the public interest (proposed § 1.1415(e)).

We anticipate that after we publish the final rule on additional traceability requirements, we will establish an electronic mailbox to receive requests for waivers for individual entities. We also expect that we will publish on our website information about how to submit materials to this electronic mailbox, as well as specifying a physical FDA address to which waiver requests could be mailed.

4. Process for Request for Waiver for Individual Entity (Proposed § 1.1420)

Proposed § 1.1420 answers the question, ''What process applies to a request for a waiver for an individual entity?'' Proposed § 1.1420(a) would provide that, after considering the information submitted in a request for a waiver for an individual entity, we will respond in writing to the person that submitted the waiver request stating whether we are granting the waiver (in whole or in part) and the reasons for the decision. Proposed § 1.1420(b) would specify that any waiver for an individual entity that we grant will become effective on the date we issue our response to the waiver request, unless otherwise stated in the response.

5. Citizen Petition for Waiver for Type of Entity (Proposed § 1.1425)

Proposed § 1.1425 answers the question, ''What must be included in a petition requesting a waiver for a type of entity?'' Proposed § 1.1425 would provide that, in addition to meeting the requirements on the content and format of a citizen petition in § 10.30, a petition requesting a waiver for a type of entity must:

- Specify the type of entity to which the waiver would apply and the requirements of subpart S to which the waiver would apply (proposed § 1.1425(a));
- present information demonstrating why application of the requirements requested to be waived would result in an economic hardship for the type of entity, including information about the unique circumstances faced by the type of entity that result in unusual economic hardship from the application of these requirements (proposed § 1.1425(b));
- present information demonstrating why the waiver will not significantly impair FDA's ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act (proposed § 1.1425(c)); and
- present information demonstrating why the waiver would not otherwise be contrary to the public interest (proposed § 1.1425(d)).

6. Public Availability of Information in Citizen Petition Requesting a Waiver (Proposed § 1.1430)

Proposed § 1.1430 answers the question, ''What information submitted in a petition requesting a waiver for a type of entity, or information in comments on such a petition, is publicly available?'' Proposed § 1.1430 would specify that we will presume that information submitted in a petition requesting a waiver for a type of entity, as well as information in comments submitted on such a petition, does not contain information exempt from public disclosure under part 20 and would be made public as part of the docket associated with the petition.

7. Process for Citizen Petition Requesting a Waiver (Proposed § 1.1435)

Proposed § 1.1435 answers the question, ''What process applies to a petition requesting a waiver for a type of entity?'' Proposed § 1.1435(a) would specify that, in general, the procedures in § 10.30 govern FDA's response to a petition requesting a waiver, and that an interested person may submit comments on a petition requesting a waiver in accordance with § 10.30(d). Proposed § 1.1435(b) would provide that, under § 10.30(h)(3), we will publish a notification in the **Federal Register** requesting information and views on a submitted petition requesting a waiver for a type of entity, including information and views from persons who could be affected by the waiver if we granted the petition.

Under proposed § 1.1435(c), we would respond to a petitioner in writing under § 10.30(e)(3), as follows:

- If we grant a petition either in whole or in part, we will publish a notification in the **Federal Register** setting forth any requirements we have waived and the reasons for the waiver (proposed § 1.1435(c)(1)); and
- if we deny the petition (including a partial denial), our written response to the petitioner will explain the reasons for the denial (proposed § 1.1435(c)(2)).

Proposed § 1.1435(d) would provide that we will make readily accessible to the public, and periodically update, a list of petitions requesting waivers for types of entities, including the status of each petition (for example, pending, granted, or denied). As with citizen petitions requesting modified requirements or an exemption from subpart S, we believe that maintaining a list of these waiver petitions would help ensure that all persons who might be affected by or are otherwise interested in these petitions can obtain information about them.

8. Process for Granting Waivers on FDA's Own Initiative (Proposed § 1.1440)

Proposed § 1.1440 answers the question, ''What process will FDA follow when waiving a requirement of this subpart on our own initiative?'' Proposed § 1.1440(a) would provide that if FDA, on its own initiative, determines that a waiver of one or more requirements for an individual entity or type of entity is appropriate, we will publish a notification in the **Federal Register** setting forth the proposed waiver and the reasons for such waiver. The notification will establish a public docket so that interested persons may submit written comments on the proposal. Proposed § 1.1440(b) would provide that after considering any comments timely submitted, we will publish a notification in the **Federal Register** stating whether we are granting the waiver (in whole or in part) and the

reasons for our decision. Under proposed § 1.1440(c), any waiver for a type of entity that we grant will become effective on the date that notice of the waiver is published in the **Federal Register**, unless otherwise stated in the notification.

9. Circumstances Under Which FDA May Modify or Revoke a Waiver (Proposed § 1.1445)

Proposed § 1.1445 answers the question, ''Under what circumstances may FDA modify or revoke a waiver?'' Proposed § 1.1445 would provide that we may modify or revoke a waiver if we determine that:

- Compliance with the waived requirements would no longer impose a unique economic hardship on the individual entity or type of entity to which the waiver applies (proposed § 1.1445(a));
- the waiver could significantly impair our ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act (proposed § 1.1445(b)); or
- the waiver is otherwise contrary to the public interest (proposed § 1.1445(c)).

One way in which we might become aware that the circumstances under which we had granted a waiver to a firm had changed might be through a routine inspection of the firm or an inspection in the course of an investigation into a foodborne illness outbreak. In addition, we would encourage firms to which we had granted a waiver to notify us if their economic/financial circumstances had changed such that compliance with subpart S would no longer result in an economic hardship for them.

10. Procedures for Modification or Revocation of a Waiver (Proposed § 1.1450)

Proposed § 1.1450 answers the question, ''What procedures apply if FDA tentatively determines that a waiver should be modified or revoked?'' As with respect to requests for waivers, we propose to establish different procedures for modifications and revocations of waivers for (1) individual entities and (2) types of entities. Proposed § 1.1450(a)(1) would provide that if we tentatively determine that we should modify or revoke a waiver for an *individual entity,* we will notify the person that had received the waiver in writing of our tentative determination that the waiver should be modified or revoked. The notice will provide the waiver recipient 60 days in which to submit information stating why the waiver should not be modified or revoked. Proposed § 1.1450(a)(2) would provide that upon consideration of any information submitted by the waiver recipient, we will respond in writing stating our decision whether to modify or revoke the waiver and the reasons for the decision. The provision further states that if we modify or revoke the waiver, the effective date of the decision will be 1 year after the date of our response to the waiver recipient, unless otherwise stated in the response.

Proposed § 1.1450(b)(1)(i) would provide that if we tentatively determine that we should modify or revoke a waiver for a *type of entity,* we will notify the person that originally requested the waiver (if we granted the waiver in response to a petition) in writing at the address identified in the petition. Proposed § 1.1450(b)(1)(ii) would specify that we will also publish a notification in the **Federal Register** of our tentative determination that the waiver should be modified or revoked and the reasons for our tentative decision. The proposed provision further states that the notification will establish a public docket so that interested persons may submit written comments on our tentative determination.

Proposed § 1.1450(b)(2) would provide that, after considering any comments timely submitted, we will publish a notification in the **Federal Register** of our decision whether to modify or revoke the waiver and the reasons for the decision. Proposed § 1.1450(b)(2) further states that if we modify or revoke the waiver, the effective date of the decision will be 1 year after the date of publication of the notification, unless otherwise stated in that notification.

I. Records Maintenance and Availability (Proposed § 1.1455)

Proposed § 1.1455 answers the question, ''How must records required by this subpart be maintained?'' We propose to adopt several requirements concerning the maintenance of records required by subpart S and FDA access to these records.

1. General Requirements (Proposed § 1.1455(a))

Proposed § 1.1455(a)(1) would require that records be kept as original paper or electronic records or true copies (such as photocopies, pictures, scanned copies, or other accurate reproductions of the original records). Proposed § 1.1455(a)(2) would require that all records be legible and stored to prevent deterioration or loss.

As discussed in section IV.D, we understand that many firms in the food industry, including farms, manufacturers, distributors, and retail food establishments, have begun maintaining and sharing product information in electronic records, which can have substantial benefits for tracing foods throughout the supply chain. The use of paper records, on the other hand, can delay traceback activities as FDA investigators must request the records, wait for the firm to gather them, and then sort through the records by hand. In addition, individual paper records may not contain all the necessary information, and investigators may need to request additional information to determine how the records can be linked together for tracing purposes. When paper records are handwritten, there can be additional delays if the handwriting is not legible. In contrast, when firms provide data electronically in a sortable format, investigators can trace food through the supply chain more quickly. As previously stated, we strongly encourage all entities in the food industry to adopt the use of electronic data systems for their traceability operations, including for maintenance of KDEs, reference records, and traceability program records. However, we are aware that not all firms have systems in place that would allow for the maintenance of these records in electronic form, and it might be burdensome for some firms if we required that all subpart S records be kept electronically. Therefore, proposed § 1.1455(a)(1) would not require the maintenance of records in electronic form, although we strongly encourage electronic recordkeeping.

2. Record Availability (Proposed § 1.1455(b))

Proposed § 1.1455(b) sets forth proposed requirements on making records available to FDA. Proposed § 1.1455(b)(1) would require that all records required to be kept under the proposed regulations be made available to an authorized FDA representative as soon as possible but not later than 24 hours after the request. Proposed § 1.1455(b)(2) would specify that offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review; electronic records would be considered to be onsite if they are accessible from an onsite location.

Proposed § 1.1455(b)(3) would require that, when necessary to help FDA

prevent or mitigate a foodborne illness outbreak, or to assist in the implementation of a recall, or to otherwise address a threat to the public health, including but not limited to situations where FDA has a reasonable belief that an article of food (and any other article of food that FDA reasonably believes is likely to be affected in a similar manner) presents a threat of serious adverse health consequences or death to humans or animals as a result of the food being adulterated under section 402 of the FD&C Act or misbranded under section 403(w) of the FD&C Act, persons subject to the subpart S requirements must make available, within 24 hours of request by an authorized FDA representative, an electronic sortable spreadsheet containing the information in the records they are required to maintain under subpart S, for the foods and date ranges specified in the request. Proposed § 1.1455(b)(3) further states that we will withdraw a request for such a spreadsheet when necessary to accommodate a religious belief of a person asked to provide a spreadsheet. (As previously discussed in section V.B.7, under Option 2 of our co-proposal regarding proposed § 1.1305(g), we would exempt retail food establishments with 10 or fewer full-time equivalent employees from this requirement.)

We believe that this proposed requirement to provide an electronic sortable spreadsheet containing traceability information on foods that are the focus of an FDA investigation into a foodborne illness outbreak or other threat to public health would be one of the most effective ways to improve the speed and efficiency of our traceback efforts. The electronic spreadsheet would contain, in a searchable format, all of the information the person is required to maintain under the proposed regulations, such as applicable records of shipment, receipt, and transformation, for the foods (and relevant date ranges) that are the subject of FDA's records request.

As noted, we would only request the specified spreadsheet when we conclude that obtaining the information in this format is necessary to help us prevent or mitigate a foodborne illness outbreak, assist in implementation of a recall, or address a credible threat of serious adverse health consequences or death due to an adulterated or misbranded food. Reviewing an electronic sortable spreadsheet would allow us to more quickly aggregate tracing information to link points in the supply chain of a potentially contaminated food, leading to faster removal of the food from the market. Although we realize that not all persons subject to the proposed rule currently maintain such a spreadsheet or other electronic records, we believe it is not unduly burdensome to require firms to have the capacity to create such a spreadsheet—limited to the specific scope of the foods and dates at issue—in the event of an outbreak or other threat to the public health. Furthermore, requiring firms to make their tracing information available to us in such a concise yet comprehensive and accessible form is needed to facilitate Agency review of tracing information and consequently help minimize the potential harm to public health resulting from foodborne illness outbreaks.

We request comment on the appropriateness and feasibility of the proposed requirement that information be made available to FDA in this form when needed to prevent or mitigate a foodborne illness outbreak, assist in implementation of a recall, or address credible threats of serious adverse health consequences or death due to an adulterated or misbranded food, and, if not appropriate and/or feasible, what alternate approaches might be appropriate to address the need for expedited access to critical traceability information in such circumstances.

Proposed § 1.1455(b)(4) would specify that, upon FDA request, persons subject to the proposed recordkeeping requirements must provide within a reasonable time an English translation of records maintained in a language other than English. A reasonable time for translation might vary, for example, from a few days to several days, depending on the volume of records requested to be translated and the extent to which persons with the necessary language fluency are available to perform the translation.

3. Record Retention (Proposed § 1.1455(c))

Proposed § 1.1455(c) would specify that persons subject to these recordkeeping requirements must maintain the records containing information required under subpart S for 2 years from the date they created the records, except as specified elsewhere in subpart S. We note that this proposed record retention period differs from the retention periods in subpart J (§ 1.360), which applies different record retention requirements depending on the length of time before a food experiences a significant risk of spoilage, loss of value, or loss of palatability. For example, under § 1.360(b) through (d), nontransporters of food must retain records according to the following schedule:

- Foods having a significant risk of spoilage, loss of value, or loss of palatability within 60 days after the date of receipt or release: Retain records for 6 months;
- foods for which a significant risk of spoilage, loss of value, or loss of palatability occurs 60 days to 6 months after the date of receipt or release: Retain records for 1 year; and
- foods for which a significant risk of spoilage, loss of value, or loss of palatability does not occur sooner than 6 months after the date of receipt or release: Retain records for 2 years.

These criteria are similar to the definitions of perishable, semiperishable, and long shelf-life food used in regulations of the National Institute of Standards and Technology (NIST). We adopted this record retention schedule for subpart J records because we concluded that the food industry was familiar with the classification of foods into these three categories due to existing regulations and practices, and we believed that use of this classification would mitigate the concern, raised by some commenters, regarding inadequate infrastructure for long-term storage of records for shorter shelf-life foods (69 FR 71562 at 71602 to 71603).

However, we believe that this tiered record retention approach would not be appropriate for the proposed additional traceability recordkeeping requirements in subpart S. Instead, we believe that, except for certain limited exceptions previously discussed in this document, records for all foods on the Food Traceability List should be retained for 2 years. Even though a highly perishable food might pose a risk to consumers for only a few weeks, illnesses caused by a contaminated food can be linked retrospectively to past illnesses through whole genome sequencing and other evidence months or even years after the food was sold. Exposure and consumption information collected from illness cases can be compared to such information from past cases of illness with the same whole genome sequencing pattern. Having access to traceability records for the food for up to 2 years after the records were created could greatly aid our investigation into an illness outbreak involving the food. In addition, if we could review food production records up to 2 years old, it could help us determine whether a current foodborne illness outbreak was part of a long-standing contamination problem with a food or firm. For these reasons, we propose to require that traceability records for all foods on the

Food Traceability List be maintained for 2 years after the records were created.

4. Electronic Records (Proposed § 1.1455(d))

Proposed § 1.1455(d) would provide that records that are established or maintained to satisfy the requirements of subpart S and that meet the definition of electronic records in 21 CFR 11.3(b)(6) (§ 11.3(b)(6)) are exempt from the requirements of 21 CFR part 11 (part 11), which contains FDA regulations on electronic records and electronic signatures. Proposed § 1.1455(d) would further specify that records that satisfy the requirements of subpart S, but that also are required under other applicable statutory provisions or regulations, remain subject to part 11, if not otherwise exempt (*e.g.,* under other regulations).

5. Use of Existing Records (Proposed § 1.1455(e))

Proposed § 1.1455(e) would provide that persons subject to these recordkeeping requirements would not have to duplicate existing records (*e.g.,* records kept in the ordinary course of business or that are maintained to comply with other Federal, State, Tribal, territorial, or local regulations) if the records contain all of the information required under the proposed rule. For example, firms would be able to rely on tracing records they keep in accordance with subpart J to meet some of the requirements that would apply to them under proposed subpart S. Proposed § 1.1455(e) further states that persons may supplement any such existing records as necessary to include all of the information required by subpart S. Proposed § 1.1455(e) is consistent with section 204(d)(1)(E) of FSMA, which in part directs that the proposed traceability recordkeeping requirements not require the creation and maintenance of duplicate records where the required information is contained in other company records kept in the normal course of business.

Proposed § 1.1455(e) would also provide that persons subject to the recordkeeping requirements would not have to keep all of the required information in one set of records. However, the provision would specify that if a person keeps the required information in more than one set of records, the person must indicate the different records in which the information is maintained in accordance with proposed § 1.1315(a), which would require persons subject to subpart S to maintain a document describing the reference records in which required information is kept.

J. Consequences of Failure To Comply (Proposed § 1.1460)

Proposed § 1.1460 answers the question, ''What consequences could result from failing to comply with the requirements of this subpart?'' Section 204(j)(1) of FSMA amends section 301(e) of the FD&C Act to make it a prohibited act to violate any recordkeeping requirement under section 204 (except when the violation is committed by a farm). Therefore, proposed § 1.1460(a) would specify that the violation of any recordkeeping requirement under section 204 of FSMA, including the violation of any requirement of subpart S, is prohibited under section 301(e) of the FD&C Act, except when such violation is committed by a farm.

Section 204(j)(2) of FSMA amended section 801(a) of the FD&C Act by adding paragraph (a)(4), which states that FDA shall refuse admission to an article of food if it appears from examination of samples of the food or otherwise that the recordkeeping requirements under section 204 of FSMA (other than the requirements under section 204(f), which concern FDA requests for information from farms under certain circumstances, and which are not addressed in this rulemaking) have not been complied with regarding such article. Therefore, proposed § 1.1460(b) would specify that an article of food is subject to refusal of admission under section 801(a)(4) of the FD&C Act if it appears that the recordkeeping requirements under section 204 of FSMA (other than the requirements under section 204(f)), including the requirements of subpart S, have not been complied with regarding such article.

K. Updating the Food Traceability List (Proposed § 1.1465)

Proposed § 1.1465 answers the question, ''How will FDA update the Food Traceability List?'' Section 204(d)(2)(B) of FSMA states that we may update the Food Traceability List to designate new high-risk foods and remove foods no longer deemed to be high-risk foods, provided that the update of the list is consistent with section 204(d)(2) and we publish notice of the update in the **Federal Register**. We will monitor the factors set forth in section 204(d)(2) (*e.g.,* known safety risks of foods (including history and severity of attributed foodborne illness outbreaks), points in manufacturing processes where contamination is likely to occur, likelihood of contamination) and consider new scientific data or other scientific information that is relevant to these factors. We anticipate periodically performing a review of such information to conclude whether it is appropriate to revise the Food Traceability List. In addition, we also will consider whether new data or other information warrants a reassessment of the methodology used to develop the list.

Upon review of relevant information, we might conclude that it would be appropriate to revise the Food Traceability List by deleting a food from the list, adding a food to the list, or both. Proposed § 1.1465(a) would provide that when we tentatively conclude, in accordance with section 204(d)(2) of FSMA, that it is appropriate to revise the Food Traceability List, we will publish a notice in the **Federal Register** stating the proposed changes to the list and the reasons for these changes, and requesting information and views on the proposed changes.

Proposed § 1.1465(b) would provide that after considering any information and views submitted on the proposed changes to the list, we will publish a notice in the **Federal Register** stating whether we are making any changes to the list and the reasons for the decision. Proposed § 1.1465(b) further states that if we revise the list, we will also publish the revised list on our website.

Proposed § 1.1465(c) would specify that when we update the Food Traceability List in accordance with § 1.1465, any deletions from the list will become effective immediately, but any additions to the list will become effective 1 year after the date of publication of the **Federal Register** notice announcing the revised list, unless otherwise stated in the notice. We believe it would be appropriate to allow time for persons who manufacture, process, pack, or hold a food that we add to the Food Traceability List to come into compliance with the additional traceability recordkeeping requirements for the food under subpart S.

VI. Proposed Effective and Compliance Dates

We propose that any final rule on additional traceability recordkeeping requirements for persons who manufacture, process, pack, or hold foods on the Food Traceability List would become effective 60 days after the date on which the rule is published in the **Federal Register**. However, as discussed below, we are proposing to provide additional time before persons subject to the regulations would be required to comply with them.

Section 204(i) of FSMA directs that the traceability recordkeeping

requirements adopted under section 204(d) will apply to small businesses (as defined under section 103 of FSMA) 1 year after the effective date of the final regulations, and to very small businesses (as defined under section 103 of FSMA) 2 years after the effective date of the final regulations. As defined under section 103 of FSMA, a ''small business'' is a business (including any subsidiaries and affiliates) employing fewer than 500 full-time equivalent employees (see 21 CFR 117.3); a ''very small business'' is a business (including any subsidiaries and affiliates), averaging less than $1,000,000, adjusted for inflation, per year, during the 3-year period preceding the applicable calendar year in sales of human food plus the market value of human food manufactured, processed, packed, or held without sale (*e.g.,* held for a fee). Although Congress established these later compliance dates for smaller entities, we believe that we could more effectively and efficiently implement the new traceability recordkeeping regulations by having all persons subject to them come into compliance by the same date. In particular, because proposed § 1.1350(b) would require that certain records be sent to the immediate subsequent recipient of the food—a provision which would help the recipient comply with the proposed requirements by providing them with some of the information necessary to comply—we are concerned that staggered compliance dates would hinder the rule's effectiveness. Therefore, we propose that the compliance date for all persons subject to these recordkeeping requirements would be 2 years after the effective date of the final regulations. We request comment on our proposed approach to compliance dates.

VII. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule is an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because some small firms may incur annualized costs that exceed one percent of their annual revenue, we find that the proposed rule will have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $156 million, using the most current (2019) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would result in an expenditure in any year that meets or exceeds this amount.

This proposed rule, if finalized, would allow FDA and industry to more rapidly and effectively trace food products that cause illnesses back through the food supply system to the source and forward to determine recipients of the contaminated product. This rule would only apply to foods we have designated for inclusion on the Food Traceability List. By allowing faster identification of contaminated foods and increasing rates of successful tracing completions, the proposed rule may result in public health benefits if foodborne illnesses directly related to those outbreaks are averted. This may also lead to more efficient use of FDA and industry resources needed for outbreak investigations by potentially resulting in more precise recalls and avoidance of overly broad market withdrawals and advisories for listed foods.

Benefits from this rule could be generated if the following two conditions hold: (1) A foodborne outbreak occurs and (2) the traceability records required by this proposed rule help FDA to quickly and accurately locate a commercially distributed violative product and ensure it is removed from the market. The primary public health benefits of this rule are the value from the reduction of the foodborne illnesses or deaths because records required by the proposed rule are likely to reduce the time that a violative or contaminated food product is distributed in the market.

Other non-health related benefits of this rule, if realized, would be from avoiding costs associated with conducting overly broad recalls and market withdrawals that affect products that otherwise would not need to be withdrawn or recalled. Although recalls of rightly implicated foods come with necessary costs, overly broad recalls that involve loosely related or unrelated products can make overall recalls unnecessarily costly. The costs of a broad recall or market withdrawal include lost revenues from unimplicated products, plus expenses associated with notifying retailers and consumers, collection, shipping, disposal, inventory, and legal costs.[1] There are no benefits from removing unimplicated products from the market. It is possible, but not certain, that both of these categories of benefits separately or jointly could be experienced to the extent quantified in this regulatory impact analysis. On the other hand, it is also possible, but not certain, that a given instance of baseline contamination would lead to a very broad recall (that could be narrowed by the proposed rule) or to illnesses (that could be avoided due to the proposed rule), but not both.

Additional benefits may include increased food supply system efficiencies, such as improvements in supply chain management and inventory control; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions by consumers; and other food supply system efficiencies due to a standardized approach to traceability, including an increase in transparency and trust and potential deterrence of fraud.

This proposed rule, if finalized, would impose compliance costs on covered entities by increasing the number of records that are required for food products on the Food Traceability List. Entities that manufacture, process, pack, or hold listed foods would incur costs to establish and maintain

[1] For example, in an undifferentiated product recall, a single firm's investment in traceability may be ineffective when competitors and partners have not instituted a traceability system. This is problematic because, for example, in the event of an undifferentiated leafy greens outbreak, issuing a broad recall could be unavoidable, at least until the implicated product is identified and removed from the market. In situations where the recalled products are insured, targeted recalls will help prevent unnecessary recall of insured products, which may have long-term consequence to retailers from increases in their insurance rates due to imprecise recalls.

traceability records. Some firms may also incur initial capital investment and training costs in systems that would enable them to establish, maintain, sort, and make available upon our request their traceability records. Moreover, firms would incur one-time costs of reading and understanding the rule. The information flows brought about by the proposed rule may prompt new protective actions—for example, in farming, manufacturing or cooking processes—that themselves would have costs. These potential costs have not been quantified but their occurrence is likely to be correlated with the realization of health and longevity benefits of this rule.

Tables 6a and 6b summarize the costs and the benefits of the proposed rule. Table 6a shows our estimates of the rule's cost if proposed Option 1 of the co-proposal regarding retail food establishments with 10 or fewer full-time equivalent employees (full exemption from the proposed rule) were selected. At a seven percent discount rate, ten-year annualized costs would range from approximately $34 million to $2.4 billion per year in 2018 dollars, with a primary estimate of $411 million per year. At a three percent discount rate, annualized costs would range from approximately $33 million to $2.4 billion per year, with a primary estimate of $400 million per year.

Table 6b shows our estimates of the rule's cost under proposed Option 2 of the co-proposal, which would exempt retail food establishments with 10 or fewer full-time equivalent employees from the requirement to provide FDA, under certain circumstances, with an electronic sortable spreadsheet containing requested tracing information. At a seven percent discount rate, annualized costs under Option 2 would range from approximately $43 million to $3.2 billion per year in 2018 dollars, with a primary estimate of $535 million per year. At a three percent discount rate, annualized costs would range from approximately $42 million to $3.1 billion per year, with a primary estimate of $513 million per year.

We estimate public health benefits using several case studies of outbreaks tracebacks for four pathogens associated with illnesses caused by foods on the Food Traceability List. These benefits have a tendency toward underestimation of the total public health benefits because these four pathogens do not represent the total burden of all illnesses associated with listed foods.[2] However, adjustments made for undiagnosed and unattributed illnesses may have the opposite tendency of overstating both illnesses and benefits associated with listed foods. We calculate these monetized benefits from illnesses averted per year based on an estimated 84 percent reduction of traceback time resulting from the requirements of this rule. Under Option 1 of the co-proposal, for an estimated 84 percent traceback improvement, the annualized monetized benefits range from $33 million to $1.4 billion with a primary estimate of $567 million, discounted at seven percent over ten years.[3] At a three percent discount rate over ten years, the annualized monetized benefits range from $33 million to $1.4 billion with a primary estimate of $580 million.

Under Option 2 of the co-proposal, for an estimated 84 percent traceback improvement, the annualized monetized benefits range from $36 million to $1.5 billion with a primary estimate of $626 million, discounted at seven percent over ten years, and from $37 million to $1.6 billion with a primary estimate of $640 million, discounted at three percent over ten years. Using examples from three recalls, we also estimate that additional (non-health) benefits of avoiding overly broad recalls could range from $1.7 billion to $5.6 billion per year at a seven percent discount rate and from $1.7 billion to $5.8 billion using a three percent discount rate. As noted earlier, it is possible that both of these categories of benefits could be experienced to the extent quantified in the regulatory impact analysis, either separately or jointly. Therefore, tables 6a and 6b avoid a definitive statement that they should be summed.

Costs are lower in Option 1, relative to Option 2, because fewer retail food establishments would need to comply with the proposed rule. However, if retail food establishments with 10 or fewer full-time equivalent employees are exempt from the Subpart S requirements, the timeliness, precision, and accuracy of traceability efforts can be impacted and non-quantified benefits, such as enhancement of our ability to narrow the number of lots in a recall and the ability of retail food establishments with 10 or fewer full-time equivalent employees to have the data necessary to quickly identify and remove contaminated products from shelves, will be lessened in comparison to Option 2. Requiring recordkeeping by retail food establishments of all sizes allows for more consistent, organized, and specific information that covers the entire supply chain.

[2] We cannot scale up to 100 percent because our estimates of the percentage of illnesses potentially avoided with improved traceability depend on data specific to each pathogen. We describe our methods in detail in section II.E.2 (''Public Health Benefits from Averted Illnesses'') of the full Preliminary Regulatory Impact Analysis (PRIA) for the proposed rule (Ref. 26). In short, these four pathogens may account for roughly 95 percent of the total dollar value of the illnesses for which traceability might be an effective preventive measure.

[3] See the PRIA for the proposed rule (Ref. 26) for an explanation of the estimated range of benefits of the proposed rule.

TABLE 6a—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE
[Option 1, in millions of dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$567 580	$33 33	$1,355 1,385	2018 2018	7 3	10 10	Monetized benefits from an estimated 84% improvement in traceback time for four pathogens. Additional benefits of avoiding overly broad recalls could range from $1.7 billion to $5.6 billion (7%, 10 years) and $1.7 billion to $5.8 billion (3%, 10 years).
Annualized Quantified							
Qualitative	Additional potential benefits include increased food supply system efficiencies; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions; and other efficiencies from a standardized approach to traceability. However, if retail food establishments with 10 or fewer full-time equivalent employees are exempt from Subpart S requirements, the timeliness, precision, and accuracy of traceability efforts can be impacted, and qualitative benefits, such as the ability to narrow the number of lots in a recall and the ability for retail food establishments with 10 or fewer full-time equivalent employees to have the data necessary to quickly identify and remove contaminated products from shelves, will be lessened in comparison to Option 2.						
Costs:							
Annualized Monetized $millions/year	$411 400	$34 33	$2,425 2,352	2018 2018	7 3	10 10	A portion of foreign costs could be passed on to domestic consumers. We estimate that up to $259 million in annualized costs (7%, 10 years) to foreign facilities could be passed on to domestic consumers.
Annualized Quantified							
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year							
From/To	From:			To:			
Other Annualized Monetized $millions/year							
From/To	From:			To:			

Effects:
State, Local or Tribal Government: No significant effect.
Small Business: Potential impact on some small entities that are currently not keeping traceability records described by the proposed rule.
Wages: N/A.
Growth: N/A.

TABLE 6b—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE
[Option 2, in millions of dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							

TABLE 6b—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE—Continued
[Option 2, in millions of dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Annualized Monetized $millions/year	$626 640	$36 37	$1,497 1,531	2018 2018	7 3	10 10	Monetized benefits from an estimated 84% reduction in traceback time for four pathogens. Additional benefits of avoiding overly broad recalls could range from $1.7 billion to $5.6 billion (7%, 10 years) and $1.7 billion to $5.8 billion (3%, 10 years).
Annualized Quantified							
Qualitative	Additional unquantified benefits include increased food supply system efficiencies; more expedient initiation and completion of recalls; avoidance of costs due to unnecessary preventive actions; and other efficiencies from a standardized approach to traceability.						
Costs:							
Annualized Monetized $millions/year	535 513	43 42	3,210 3,063	2018 2018	7 3	10 10	A portion of foreign costs could be passed on to domestic consumers. We estimate that up to $259 million in annualized costs (7%, 10 years) to foreign facilities could be passed on to domestic consumers.
Annualized Quantified							
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year							
From/To	From:			To:			
Other Annualized Monetized $millions/year							
From/To	From:			To:			

Effects:
State, Local or Tribal Government: No significant effect.
Small Business: Potential impact on small entities that are currently not keeping traceability records described by the proposed rule.
Wages: N/A.
Growth: N/A.

In accordance with Executive Order 13771, in tables 7a and 7b we estimate present and annualized values of costs and cost savings of the proposed rule over an infinite time horizon. This proposed rule is expected to be a regulatory action under Executive Order 13771.

TABLE 7a—E.O. 13771 SUMMARY TABLE
[Option 1, in millions 2016 dollars, over an infinite time horizon]

Item	Primary estimate (7%)	Lower estimate (7%)	Upper estimate (7%)
Present Value of Costs	$5,105	$438	$29,659
Present Value of Cost Savings			
Present Value of Net Costs	5,105	438	29,659
Annualized Costs	357	31	2,076
Annualized Cost Savings			
Annualized Net Costs	357	31	2,076

TABLE 7b—E.O. 13771 SUMMARY TABLE

[Option 2, in millions 2016 dollars, over an infinite time horizon]

Item	Primary estimate (7%)	Lower estimate (7%)	Upper estimate (7%)
Present Value of Costs	$6,288	$532	$36,867
Present Value of Cost Savings	.....	.....	.....
Present Value of Net Costs	6,288	532	36,867
Annualized Costs	440	37	2,581
Annualized Cost Savings	.....	.....	.....
Annualized Net Costs	440	37	2,581

We have also considered an alternative way of describing costs and benefits. Given uncertainties in the data underlying our costs and benefits estimates, tables 8a and 8b explore the possibility that baseline costs of recalls are more fully internalized by market actors.

Column (a) of tables 8a and 8b explores the possibility that market actors do not already account for the costs of foodborne illnesses associated with listed foods (*e.g.,* public health benefits of products with better traceability are not captured in product price) and/or the costs of overly broad recalls (*e.g.,* firms do not invest enough in traceability because they do not expect other firms to also invest). Primary estimates (and relatively large portions of the uncertainty ranges) indicate that benefits of the rule would be greater than the rule's cost. Column (b) of tables 8a and 8b considers scenarios where market actors already fully account for the costs of overly broad recalls. Then recall-associated benefits would not be greater than the cost of the rule. This means firms have already invested in traceability to the point where further investment would cost more than the benefit they would expect to receive. Then the total benefits of the rule, including health benefits, may or may not be greater than the rule's cost.

TABLE 8a—SUMMARY OF BENEFITS AND COSTS OF PROPOSED RULE (OPTION 1), AS A FUNCTION OF ASSUMPTIONS REGARDING BASELINE COST INTERNALIZATION *

	Neither adverse health effects nor recall-associated costs fully internalized in market transactions for listed foods (a)	Recall-associated costs, but not adverse health effects, fully internalized in market transactions for listed foods (b)
PRIA Section IV.B.	Health Benefits: $567M (range: $33M to $1.4B)	Health Benefits: $567M (range: $33M to $1.4B)
	and/or	
PRIA Section II.E.3.	Recall-Associated Benefits: $1.7B to $5.6B	Recall-Associated Benefits: $1.7B to $5.6B. Direct Compliance Costs >$1.7B to $5.6B. Protective Action Costs (potential): Not quantified. *or* Recall-Associated Benefits < Costs.
PRIA Sections IV.C and IV.D.	Direct Compliance Costs (if foreign passed through to U.S. supply chain & consumers): $670M (range: $52M to $4B). Direct Compliance Costs (if foreign *not* passed through to U.S. supply chain & consumers): $411M (range: $34M to $2.4B). Protective Action Costs (potential): not quantified	Direct Compliance Costs (if foreign passed through to U.S. supply chain & consumers): $670M (range: $52M to $4B). Direct Compliance Costs (if foreign *not* passed through to U.S. supply chain & consumers): $411M (range: $34M to $2.4B). Protective Action Costs (potential): not quantified.

* Primary estimates presented in this table are calculated with a 7 percent discount rate; primary estimates discounted at 3 percent differ only slightly. All estimates are expressed in 2018 dollars and annualized over 10 years. Abbreviations: M = million, B = billion.

TABLE 8b—SUMMARY OF BENEFITS AND COSTS OF PROPOSED RULE (OPTION 2), AS A FUNCTION OF ASSUMPTIONS REGARDING BASELINE COST INTERNALIZATION *

	Neither adverse health effects nor recall-associated costs fully internalized in market transactions for listed foods (a)	Recall-associated costs, but not adverse health effects, fully internalized in market transactions for listed foods (b)
PRIA Section II.E.2.	Health Benefits: $626M (range: $36M to $1.5B)	Health Benefits: $626M (range: $36M to $1.5B).
	and/or	Recall-Associated Benefits: $1.7B to $5.6B.
PRIA Section II.E.3.	Recall-Associated Benefits: $1.7B to $5.6B	Direct Compliance Costs >$1.7B to $5.6B Protective Action Costs (potential): Not quantified. *or* Recall-Associated Benefits < Costs.
RIA Sections II.F and II.H.	Direct Compliance Costs (if foreign passed through to U.S. supply chain & consumers): $794M (range: $61M to $4.8B). Direct Compliance Costs (if foreign *not* passed through to U.S. supply chain & consumers): $535M (range: $43M to $3.2B).	Direct Compliance Costs (if foreign passed through to U.S. supply chain & consumers): $794M (range: $61M to $4.8B). Direct Compliance Costs (if foreign *not* passed through to U.S. supply chain & consumers): $535M (range: $43M to $3.2B).

TABLE 8b—SUMMARY OF BENEFITS AND COSTS OF PROPOSED RULE (OPTION 2), AS A FUNCTION OF ASSUMPTIONS REGARDING BASELINE COST INTERNALIZATION *—Continued

	Neither adverse health effects nor recall-associated costs fully internalized in market transactions for listed foods (a)	Recall-associated costs, but not adverse health effects, fully internalized in market transactions for listed foods (b)
	Protective Action Costs (potential): Not quantified	Protective Action Costs (potential): Not quantified.

* Primary estimates presented in this table are calculated with a 7 percent discount rate; primary estimates discounted at 3 percent differ only slightly. All estimates are expressed in 2018 dollars and annualized over 10 years. Abbreviations: M = million, B = billion.

The full PRIA (Ref. 26) is available in the docket for this proposed rule and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*).

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment not an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section with an estimate of the reporting, recordkeeping, and disclosure burden associated with the proposed rule. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Traceability Records for Certain Foods—OMB Control No. 0910–0560—Revision.

Description: If the proposed rule is finalized, provisions in 21 CFR part 1, subpart S, would implement section 204(d)(1) of FSMA, which requires FDA to establish traceability recordkeeping requirements, in addition to the requirements under section 414 of the FD&C Act and 21 CFR part 1, subpart J (the subpart J requirements) (currently approved under OMB control number 0910–0560), for facilities that manufacture, process, pack, or hold foods that the Agency has designated as high-risk foods (*i.e.,* placed on the ''Food Traceability List'') in accordance with section 204(d)(2) of FSMA. The proposed subpart S recordkeeping, reporting, and disclosure requirements are intended to strengthen public health protections by improving FDA's ability to trace the movement of foods throughout the supply chain to identify the source of contaminated foods and aid in the removal of contaminated products from the market. Access to and utilization of such records would better enable FDA to respond to and contain threats to the public health introduced through foods on the Food Traceability List (''listed foods''). Existing regulations in subpart J set forth traceability recordkeeping requirements for firms that manufacture, process, pack, transport, distribute, receive, hold, or import food. We are proposing to establish additional recordkeeping requirements for foods on the Food Traceability List.

Description of Respondents: Except as specified otherwise, the requirements in the proposed rule apply to persons who manufacture, process, pack, or hold foods that appear on the list of foods for which additional traceability records are required in accordance with section 204(d)(2) of FSMA (the Food Traceability List).

We estimate the burden of the information collection as follows:

TABLE 9—ESTIMATED ONE-TIME RECORDKEEPING BURDEN

Proposed activity	Number of respondents	Number of records per respondent	Total annual records	Average burden per record (in hours)	Total hours
Reading and understanding the new record-keeping requirements.	422,145	1	422,145	3.3	1,393,079
§ 1.1315; traceability program records (one-time set-up).	130,063	1,000	130,063,000	0.03 (2 minutes)	3,901,890
Training personnel	96,644	3	289,932	2	579,864
Total	.....	.....	.....	.....	5,874,833

As reflected in table 9, we assume all potential respondents to the information collection will incur burden for reading and understanding the proposed regulations. Based on our experience with similar information collection, we assume that reading and understanding the new requirements will require an average of 3.3 hours for each of the 422,145 respondents, for an estimated burden of 1,393,079 hours. In addition, some firms will incur a one-time burden of establishing traceability program records under proposed § 1.1315. We estimate that 130,063 firms will need 0.03 hours to establish each of an average of 1,000 records, for an estimated one-time burden of 3,901,890

hours. Additionally, upon reviewing the regulations and implementing procedures to satisfy the information collection, we expect that some firms will incur burden associated with training employees in procedures for properly documenting key data elements identified in the proposed regulations. We estimate that 96,644 firms will need to conduct an average of 2 hours of training with respect to an average of 3 records, for a total of 579,864 hours. Cumulatively, this results in a total of 5,874,833 one-time burden hours for respondents.

TABLE 10—ESTIMATED ANNUAL REPORTING BURDEN

Proposed reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
§ 1.1370; Requests for modified requirements and exemptions	5	1	5	10	50
§§ 1.1415 through 1.1425; Requests for waivers	15	1	15	10	150
§ 1.1465(a); Comments on proposed revisions to the Food Traceability List	1	1	1	1	1
Total			22		202

Proposed §§ 1.1300 and 1.1305 set forth the scope and applicability of the regulations, as well as identify certain foods and persons that would be exempt from the additional recordkeeping requirements. Proposed §§ 1.1360 through 1.1400 discuss how respondents to the information collection may request modified requirements and exemptions from the subpart S requirements for certain foods or types of entities. If the proposed rule is finalized, the regulations would explain the procedures and identify the content and format elements that should be included in such requests submitted to FDA, as well as the procedures FDA will follow when proposing modified requirements or exemptions on its own initiative. Specifically, the proposed regulations provide that respondents requesting modified requirements and exemptions must petition the Agency under our regulations in § 10.30. In accordance with the proposed regulations, FDA will publish a notification in the **Federal Register** requesting information and views on a submitted petition. Based on our experience with similar information collection, we assume few requests for modified requirements or exemptions will be submitted to the Agency and therefore provide a base estimate of five submissions annually, as reflected in table 10, row 1. Assuming each submission requires an average of 10 hours to prepare, this results in a total of 50 hours. We invite comment on the estimated burden associated with requests for modified requirements or exemptions from the proposed requirements.

Proposed §§ 1.1410 through 1.1455 pertain to waivers from the subpart S requirements for individual entities and types of entities. If the rule is finalized, these regulations would specify that the procedures for submitting waiver requests for types of entities are governed by § 10.30 and would identify requisite content and format elements for such requests. The regulations would further specify that requests for waivers for individual entities are to be made via written requests (not governed by § 10.30). Based on our experience with similar information collection, we believe that slightly more waiver requests (compared to requests for modified requirements or an exemption) will be submitted and we therefore provide a base estimate of 15 submissions annually, as reflected in table 10, row 2. Assuming each submission requires an average of 10 hours to prepare, this results in a total of 150 hours. We invite comment on the estimated burden associated with requests for waivers from the proposed requirements.

Finally, proposed § 1.1465 provides for FDA publication of proposed updates to the Food Traceability List in the **Federal Register**, which would include the opportunity for public comment on proposed changes. Because we believe that, on an annualized basis, the burden associated with submitting comments on a proposed change to the Food Traceability List would be negligible, we provide a minimal estimate of one response requiring 1 burden hour annually, as reflected in table 10, row 3. We invite comment on the estimated burden associated with requesting views on a proposed updated Food Traceability List.

TABLE 11—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Proposed 21 CFR recordkeeping	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
§ 1.1305; partial exemption under: (e)(2)—commingled RACs; (h)(2)—retail food establishments; (i)(2)—farms; (j)(2)—fishing vessels.	1	1	1	1	1
§ 1.1315; traceability program general records (recurring).	130,063	1,000	130,063,000	0.004 (15 seconds)	520,252
§ 1.1325; grower (non-sprout growers)	9,408	1,000	9,408,000	0.03 (2 minutes)	282,240
§ 1.1325; grower (sprout growers)	51	1,000	51,000	0.07 (4 minutes)	3,570
§ 1.1330; first receiver	12,700	1,000	12,700,000	0.03 (2 minutes)	381,000
§ 1.1335; receiver	265,610	1,000	265,610,000	0.004 (15 seconds)	1,062,440
§ 1.1340; transformer	5,244	1,000	5,244,000	0.03 (2 minutes)	157,320
§ 1.1345; creator	222	1,000	222,000	0.03 (2 minutes)	6,660

TABLE 11—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

Proposed 21 CFR recordkeeping	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
§ 1.1350; shipper (wholesalers/warehouses/distribution centers; includes disclosure requirement).	12,657	48,333	611,750,781	0.008 (30 seconds)	4,894,006
§ 1.1350; shipper (other shippers; includes disclosure requirement).	16,936	1,000	16,936,000	0.06 (3.5 minutes)	1,016,160
Total	.....	.....	.....	.....	8,323,649

Proposed § 1.1305 provides for certain exemptions and partial exemptions from the proposed subpart S requirements. For the proposed partial exemptions for farm to school programs and for retail food establishments with respect to food produced on a farm and sold directly to the retail food establishment, we conclude that any burden under the proposed rule would be negligible because most retail food establishments and farms already keep the records they would be required to keep under the partial exemptions (*i.e.,* the name and address of the farm that was the source of the food) as part of their standard business practices. For these reasons, we therefore provide a minimum estimate of one respondent requiring 1 hour to establish one record, resulting in an estimated burden of 1 hour. We invite comment on the estimated burden associated with these partial exemptions in proposed § 1.1305.

The requirements in §§ 1.1315 through 1.1350 would identify respondents who are subject to the respective recordkeeping provisions, including with respect to general traceability program records and records documenting the critical tracking events of growing, receiving (including by first receivers), transforming, creating, and shipping foods on the Food Traceability List. The requirements specify when certain records should be established and the key data elements that must be documented.

In table 11, we provide recordkeeping burden estimates associated with these recordkeeping requirements. The number of respondents, number of records, and time per recordkeeping activity is consistent with figures included in our PRIA for the proposed rule (Ref. 26). Although we note that shippers of listed foods must also disclose required records in accordance with proposed § 1.1350(b), we have included this burden as part of our recordkeeping estimate for this provision. This is because we believe that this disclosure burden would be minimal since, with the exception of certain information that farms must disclose (addressed in table 12 below), respondents must establish and maintain such information under the proposed rule. We invite comment on the estimated burden associated with both recordkeeping and disclosure provisions in §§ 1.1315 and 1.1325 through 1.1350 of the proposed rule.

Proposed § 1.1355 would exempt listed foods to which a kill step has been applied from all subsequent requirements of the proposed rule, provided that a record of application of the kill step is maintained. Because firms that apply a kill step to a food are required to document this activity under other FDA regulations (*e.g.,* 21 CFR 113.100, 21 CFR 117.190(a)(2)), the proposed requirement to maintain a record of application of a kill step to listed foods would not create an additional recordkeeping burden for such firms under the proposed rule.

Proposed § 1.1455 discusses the maintenance and accessibility of records. Under proposed § 1.1455(b)(3), when necessary to help FDA prevent or mitigate a foodborne illness outbreak, assist in the implementation of a recall, or otherwise address a threat to the public health, respondents may be asked to make available within 24 hours of request by an authorized FDA representative an electronic sortable spreadsheet containing the information they are required to maintain under subpart S, for the foods and date ranges specified in the request. We anticipate that most firms will never be the subject of such a request, because the proposed provision only applies to situations where there is a threat to the public health. Furthermore, we believe that such spreadsheets can be created using software that is readily available and that is commonly used for other general business purposes. In situations where the firm does not maintain records electronically, the information for the specific foods and date ranges could be input manually into such software. We therefore estimate any additional burden posed by proposed § 1.1455(b)(3) would be negligible. We invite comment on this estimated burden.

TABLE 12—ESTIMATED ANNUAL DISCLOSURE BURDEN

Proposed disclosure activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure (in hours)	Total hours
§ 1.1350(b)(2); farms	9,459	1,000	9,459,000	0.004	37,836
Total	.....	.....	.....	.....	.....

In addition to the disclosures that entities other than farms must make under proposed § 1.1350(b), farms would incur additional burden attributable to requirements to disclose information (if applicable) about the origination, harvesting, cooling, and packing of the food the farm shipped. In table 12 we estimate that 9,459 farms will need to make 1,000 such disclosures, resulting in a total disclosure burden of 37,836 hours. We

invite comment on this estimated disclosure burden for farms under proposed § 1.1350(b)(2).

To ensure that comments on information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain* (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. We will announce OMB approval of the information collection requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We invite comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. * Institute of Food Technologists, ''Task Order No. 7 Final Report (revised): Tracing systems: an exercise exploring data needs and design,'' 2009.
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4. * FDA, ''FDA Investigated Multistate Outbreak of E. coli O157:H7 Infections Linked to SoyNut Butter,'' May 4, 2017 (*https://www.fda.gov/food/outbreaks-foodborne-illness/fda-investigated-multistate-outbreak-e-coli-o157h7-infections-linked-soynut-butter*).
5. * Pro Sports Club, ''Pro Sports Club Recalls Yogurt Peanut Crunch Bar Because of Possible Health Risk,'' March 24, 2017 (*https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/pro-sports-club-recalls-yogurt-peanut-crunch-bar-because-possible-health-risk*).
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10. * FDA, ''Outbreak Investigation of Scombrotoxin Fish Poisoning: Yellowfin/Ahi Tuna (November 2019),'' January 24, 2020 (*https://www.fda.gov/food/outbreaks-foodborne-illness/outbreak-investigation-scombrotoxin-fish-poisoning-yellowfinahi-tuna-november-2019*).
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14. * FDA, ''FDA's Response to External Peer Review—Model Review on FDA's 'Draft Report for Peer Review: Risk-Ranking Model for Product Tracing as Required by Section 204 of FSMA' (September 2015),'' August 2020.
15. * FDA, ''FDA's Response to External Peer Review—Data Review on FDA's 'Draft Report for Peer Review: Risk-Ranking Model for Product Tracing as Required by Section 204 of FSMA' (September 2015),'' August 2020.
16. * FDA Memorandum, ''Methodological Approach to Developing a Risk-Ranking Model for Food Tracing FSMA Section 204 (21 U.S. Code § 2223),'' August 2020 (*https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-reports-studies*).
17. * FDA Memorandum, ''Designation of the Food Traceability List Using the Risk-Ranking Model for Food Tracing (2019 Version),'' September 2, 2020.
18. * FDA Memorandum, ''Food Traceability List for Requirements for Additional Traceability Records for Certain Foods Proposed Rule 2020,'' August 12, 2020.
19. * FDA Memorandum, ''Summary of Meetings With Stakeholders on Development of Additional Recordkeeping Requirements for Certain Foods Under Section 204(d) of the FDA Food Safety Modernization Act,'' July 20, 2020.
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21. * FDA, ''A New Era of Smarter Food Safety; Public Meeting; Request for Comments,'' Docket No. 2019–N–4187, September 18, 2019 (*https://www.federalregister.gov/documents/*

2019/09/18/2019-20229/a-new-era-of-smarter-food-safety-public-meeting-request-for-comments).
22. * FDA Memorandum, ''Inclusion of Retail Establishments of All Sizes Under FSMA Section 204,'' August 13, 2020.
23. National Advisory Committee on Microbiological Criteria for Foods, ''Microbiological Safety Evaluations and Recommendations on Sprouted Seeds,'' *International Journal of Food Microbiology* 52(3): 123–153 (1999).
24. * FDA Memorandum, ''2012–2020 Sprout-Related Outbreak Data,'' July 20, 2020.
25. * FDA, ''Reducing Microbial Food Safety Hazards in the Production of Seed for Sprouting: Guidance for Industry'' (Draft Guidance), June 2019 (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/draft-guidance-industry-reducing-microbial-food-safety-hazards-production-seed-sprouting*).
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List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 350j, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 374, 381, 382, 384a, 387, 387a, 387c, 393, and 2223; 42 U.S.C. 216, 241, 243, 262, 264, 271.

■ 2. Add subpart S, consisting of §§ 1.1300 through 1.1465, to read as follows:

Subpart S—Additional Traceability Records for Certain Foods

Sec.

Subpart S—Additional Traceability Records for Certain Foods

General Provisions

§ 1.1300 Who is subject to this subpart?

Except as specified otherwise in this subpart, the requirements in this subpart apply to persons who manufacture, process, pack, or hold foods that appear on the list of foods for which additional traceability records are required in accordance with section 204(d)(2) of the FDA Food Safety Modernization Act (Food Traceability List). FDA will publish the Food Traceability List on its website in accordance with section 204(d)(2)(B) of the FDA Food Safety Modernization Act.

§ 1.1305 What foods and persons are exempt from this subpart?

(a) *Exemptions for small originators*—(1) *Certain produce farms.* This subpart does not apply to farms or the farm activities of farm mixed-type facilities with respect to the produce (as defined in § 112.3 of this chapter) they grow, when the farm is not a covered farm under part 112 of this chapter in accordance with § 112.4(a) of this chapter.

(2) *Certain shell egg producers.* This subpart does not apply to shell egg producers with fewer than 3,000 laying hens at a particular farm, with respect to the shell eggs they produce at that farm.

(3) *Certain other originators of food.* This subpart does not apply to

originators of food with an average annual monetary value of food sold during the previous 3-year period of no more than $25,000 (on a rolling basis), adjusted for inflation using 2019 as the baseline year for calculating the adjustment.

(b) *Exemption for farms when food is sold directly to consumers.* This subpart does not apply to a farm with respect to food produced on the farm (including food that is also packaged on the farm) that is sold directly to a consumer by the owner, operator, or agent in charge of the farm.

(c) *Inapplicability to certain food produced and packaged on a farm.* This subpart does not apply to food produced and packaged on a farm, provided that:

(1) The packaging of the food remains in place until the food reaches the consumer, and such packaging maintains the integrity of the product and prevents subsequent contamination or alteration of the product; and

(2) The labeling of the food that reaches the consumer includes the name, complete address (street address, town, State, country, and zip or other postal code for a domestic farm and comparable information for a foreign farm), and business phone number of the farm on which the food was produced and packaged. Upon request, FDA will waive the requirement to include a business phone number, as appropriate, to accommodate a religious belief of the individual in charge of the farm.

(d) *Inapplicability to foods that receive certain types of processing.* This subpart does not apply to the following foods that receive certain processing:

(1) Produce that receives commercial processing that adequately reduces the presence of microorganisms of public health significance, provided the conditions set forth in § 112.2(b) of this chapter are met for the produce; and

(2) Shell eggs when all eggs produced at the particular farm receive a treatment (as defined in § 118.3 of this chapter) in accordance with § 118.1(a)(2) of this chapter.

(e) *Exemption for produce that is rarely consumed raw.* This subpart does not apply to produce that is listed as rarely consumed raw in § 112.2(a)(1) of this chapter.

(f) *Partial exemption of commingled raw agricultural commodities.* (1) Except as specified in paragraph (f)(2) of this section, this subpart does not apply to commingled raw agricultural commodities. For the purpose of this subpart, a ''commingled raw agricultural commodity'' means any commodity that is combined or mixed after harvesting but before processing, except that the term ''commingled raw agricultural commodity'' does not include types of fruits and vegetables that are raw agricultural commodities to which the standards for the growing, harvesting, packing, and holding of produce for human consumption in part 112 of this chapter apply. For purposes of this paragraph (f)(1), a commodity is ''combined or mixed'' only when the combination or mixing involves food from different farms. Also, for purposes of this paragraph (f)(1), the term ''processing'' means operations that alter the general state of the commodity, such as canning, cooking, freezing, dehydration, milling, grinding, pasteurization, or homogenization.

(2) With respect to a commingled raw agricultural commodity that receives the exemption set forth in paragraph (f)(1) of this section, if a person who manufactures, processes, packs, or holds such commingled raw agricultural commodity is required to register with FDA under section 415 of the Federal Food, Drug, and Cosmetic Act with respect to the manufacturing, processing, packing, or holding of the applicable raw agricultural commodity, in accordance with the requirements of subpart H of this part, such person must maintain records identifying the immediate previous source of such raw agricultural commodity and the immediate subsequent recipient of such food in accordance with §§ 1.337 and 1.345. Such records must be maintained for 2 years.

Option 1 for Paragraph (g)

(g) *Exemption for small retail food establishments.* This subpart does not apply to retail food establishments that employ 10 or fewer full-time equivalent employees. The number of full-time equivalent employees is based on the number of such employees at each retail food establishment and not the entire business, which may own numerous retail stores.

Option 2 for Paragraph (g)

(g) *Partial exemption for small retail food establishments.* The requirement in § 1.1455(b)(3) to make available to FDA under specified circumstances an electronic sortable spreadsheet containing the information required to be maintained under this subpart (for the foods and date ranges specified in FDA's request) does not apply to retail food establishments that employ 10 or fewer full-time equivalent employees. The number of full-time equivalent employees is based on the number of such employees at each retail food establishment and not the entire business, which may own numerous retail stores.

(h) *Partial exemption for retail food establishments.* (1) Except as specified in paragraph (h)(2) of this section, the recordkeeping requirements of this subpart do not apply to a retail food establishment with respect to a food that is produced on a farm (including food produced and packaged on the farm) and sold directly to the retail food establishment by the owner, operator, or agent in charge of that farm.

(2) When a retail food establishment purchases a food on the Food Traceability List directly from a farm in accordance with paragraph (h)(1) of this section, the retail food establishment must establish and maintain a record documenting the name and address of the farm that was the source of the food. The retail food establishment must maintain such records for 180 days.

(i) *Partial exemption for farm to school and farm to institution programs.* (1) Except as specified in paragraph (i)(2) of this section, this subpart does not apply to an institution operating a child nutrition program authorized under the Richard B. Russell National School Lunch Act or Section 4 of the Child Nutrition Act of 1966, or any other entity conducting a farm to school or farm to institution program, with respect to a food that is produced on a farm (including food produced and packaged on the farm) and sold directly to the school or institution.

(2) When a school or institution conducting farm to school or farm to institution activities purchases a food directly from a farm in accordance with paragraph (i)(1) of this section, the school food authority or relevant food procurement entity must establish and maintain a record documenting the name and address of the farm that was the source of the food. The school food authority or relevant food procurement entity must maintain such records for 180 days.

(j) *Partial exemption for food produced through the use of fishing vessels.* (1) Except as specified in paragraph (j)(2) of this section, with respect to a food that is produced through the use of a fishing vessel, this subpart does not apply to the owner, operator, or agent in charge of the fishing vessel.

(2) With respect to the owner, operator, or agent in charge of the fishing vessel who receives the partial exemption set forth in paragraph (j)(1) of this section, if such person is required to register with FDA under section 415 of the Federal Food, Drug, and Cosmetic Act with respect to the manufacturing, processing, packing, or holding of the

applicable food, in accordance with the requirements of subpart H of this part, such person must maintain records identifying the immediate previous source of such food and the immediate subsequent recipient of such food in accordance with §§ 1.337 and 1.345. Such records must be maintained for 2 years.

(k) *Exemption for transporters.* This subpart does not apply to transporters of food.

(l) *Exemption for nonprofit food establishments.* This subpart does not apply to nonprofit food establishments.

(m) *Exemption for persons who manufacture, process, pack, or hold food for personal consumption.* This subpart does not apply to persons who manufacture, process, pack, or hold food for personal consumption.

(n) *Exemption for certain persons who hold food on behalf of individual consumers.* This subpart does not apply to persons who hold food on behalf of specific individual consumers, provided that these persons:

(1) Are not parties to the transaction involving the food they hold; and

(2) Are not in the business of distributing food.

§ 1.1310 What definitions apply to this subpart?

The definitions of terms in section 201 of the Federal Food, Drug, and Cosmetic Act apply to such terms when used in this subpart. In addition, the following definitions apply to words and phrases as they are used in this subpart:

Category means a code or term used to classify a food product in accordance with a recognized industry or regulatory classification scheme, or a classification scheme a person develops for their own use.

Cooling means active temperature reduction of a food using hydrocooling, icing, forced air cooling, vacuum cooling, or a similar process, either before or after packing.

Creating means making or producing a food on the Food Traceability List (*e.g.,* through manufacturing or processing) using only ingredient(s) that are not on the Food Traceability List. Creating does not include originating or transforming a food.

Critical tracking event means an event in the supply chain of a food involving the growing, receiving (including receipt by a first receiver), transforming, creating, or shipping of the food.

Farm means farm as defined in § 1.328. For producers of shell eggs, ''farm'' means all poultry houses and grounds immediately surrounding the poultry houses covered under a single biosecurity program, as set forth in § 118.3 of this chapter.

First receiver means the first person (other than a farm) who purchases and takes physical possession of a food on the Food Traceability List that has been grown, raised, caught, or (in the case of a non-produce commodity) harvested.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Food Traceability List means the list of foods for which additional traceability records are required to be maintained, as designated in accordance with section 204(d)(2) of the FDA Food Safety Modernization Act. The term ''Food Traceability List'' includes both the foods specifically listed and foods that contain specifically listed foods as ingredients.

Growing area coordinates means the geographical coordinates (under the global positioning system or latitude/longitude) for the entry point of the physical location where the food was grown and harvested.

Harvesting applies to farms and farm mixed-type facilities and means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities performed on raw agricultural commodities, or on processed foods created by drying/dehydrating a raw agricultural commodity without additional manufacturing/processing, on a farm. Harvesting does not include activities that transform a raw agricultural commodity into a processed food as defined in section 201(gg) of the Federal Food, Drug, and Cosmetic Act. Examples of harvesting include cutting (or otherwise separating) the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity (*e.g.,* foliage, husks, roots, or stems). Examples of harvesting also include collecting eggs, taking of fish and other seafood in aquaculture operations, milking, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm.

Holding means storage of food and also includes activities performed incidental to storage of a food (*e.g.,* activities performed for the safe or effective storage of that food, such as fumigating food during storage, and drying/dehydrating raw agricultural commodities when the drying/dehydrating does not create a distinct commodity (such as drying/dehydrating hay or alfalfa)). Holding also includes activities performed as a practical necessity for the distribution of that food (such as blending of the same raw agricultural commodity and breaking down pallets) but does not include activities that transform a raw agricultural commodity into a processed food as defined in section 201(gg) of the Federal Food, Drug, and Cosmetic Act. Holding facilities include warehouses, cold storage facilities, storage silos, grain elevators, and liquid storage tanks.

Key data element means information associated with a critical tracking event for which a record must be established and maintained in accordance with this subpart.

Kill step means processing that significantly minimizes pathogens in a food.

Location description means a complete physical address and other key contact information, specifically the business name, physical location name, primary phone number, physical location street address (or geographical coordinates), city, state, and zip code for domestic facilities and comparable information for foreign facilities, including country; except that for fishing vessels, *location description* means the name of the fishing vessel that caught the seafood, the country in which the fishing vessel's license (if any) was issued, and a point of contact for the fishing vessel.

Location identifier means a unique identification code that an entity assigns to the physical location name identified in the corresponding location description; except that for fishing vessels, *location identifier* means the vessel identification number or license number (both if available) for the fishing vessel.

Lot means the food produced during a period of time at a single physical location and identified by a specific code. A lot may also be referred to as a *batch* or *production run.*

Manufacturing/processing means making food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities include baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw

agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

Mixed-type facility means an establishment that engages in both activities that are exempt from registration under section 415 of the Federal Food, Drug, and Cosmetic Act and activities that require the establishment to be registered. An example of such a facility is a ''farm mixed-type facility,'' which is an establishment that is a farm, but also conducts activities outside the farm definition that require the establishment to be registered.

Nonprofit food establishment means a charitable entity that prepares or serves food directly to the consumer or otherwise provides food or meals for consumption by humans or animals in the United States. The term includes central food banks, soup kitchens, and nonprofit food delivery services. To be considered a nonprofit food establishment, the establishment must meet the terms of section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)).

Originating means an event in a food's supply chain involving the growing, raising, or catching of a food (typically on a farm, a ranch, or at sea), or the harvesting of a non-produce commodity.

Originator means a person who grows, raises, or catches a food, or harvests a non-produce commodity.

Packing means placing food into a container other than packaging the food and also includes re-packing and activities performed incidental to packing or re-packing a food (*e.g.,* activities performed for the safe or effective packing or re-packing of that food (such as sorting, culling, grading, and weighing or conveying incidental to packing or re-packing)), but does not include activities that transform a raw agricultural commodity, as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act, into a processed food as defined in section 201(gg) of the Federal Food, Drug, and Cosmetic Act.

Person includes an individual, partnership, corporation, and association.

Physical location name means the word(s) used to identify the specific physical site of a business entity where a particular critical tracking event occurs. A physical location name might be the same as an entity's business name if the entity has only one physical location.

Point of contact means an individual having familiarity with an entity's procedures for traceability, including their name, telephone number, and, if available, their email address and fax number.

Produce means produce as defined in § 112.3 of this chapter.

Receiving means an event in a food's supply chain in which a food is received by a customer (other than a consumer) at a defined location after being transported (*e.g.,* by truck or ship) from another defined location.

Reference record means a record used to identify an event in the supply chain of a food, such as a shipping, receiving, growing, creating, or transformation event. Types of reference records include, but are not limited to, bills of lading, purchase orders, advance shipping notices, work orders, invoices, batch logs, production logs, and receipts.

Reference record number means the identification number assigned to a reference record, such as a purchase order number, bill of lading number, or work order number.

Retail food establishment means an establishment that sells food products directly to consumers as its primary function. The term ''retail food establishment'' includes facilities that manufacture, process, pack, or hold food if the establishment's primary function is to sell from that establishment food, including food that it manufactures, processes, packs, or holds, directly to consumers. A retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers. The term ''consumers'' does not include businesses. A ''retail food establishment'' includes grocery stores, convenience stores, and vending machine locations. A ''retail food establishment'' also includes certain farm-operated businesses selling food directly to consumers as their primary function.

(1) Sale of food directly to consumers from an establishment located on a farm includes sales by that establishment directly to consumers:

(i) At a roadside stand (a stand situated on the side of or near a road or thoroughfare at which a farmer sells food from his or her farm directly to consumers) or farmers' market (a location where one or more local farmers assemble to sell food from their farms directly to consumers);

(ii) Through a community supported agriculture program. Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. This includes CSA programs in which a group of farmers consolidate their crops at a central location for distribution to shareholders or subscribers; and

(iii) At other such direct-to-consumer sales platforms, including door-to-door sales; mail, catalog and internet order, including online farmers' markets and online grocery delivery; religious or other organization bazaars; and State and local fairs.

(2) Sale of food directly to consumers by a farm-oriented business includes the sale of food by that farm-operated business directly to consumers:

(i) At a roadside stand (a stand situated on the side of or near a road or thoroughfare at which a farmer sells food from his or her farm directly to consumers) or farmers' market (a location where one or more local farmers assemble to sell food from their farms directly to consumers);

(ii) Through a community supported agriculture program. Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. This includes CSA programs in which a group of farmers consolidate their crops at a central location for distribution to shareholders or subscribers; and

(iii) At other such direct-to-consumer sales platforms, including door-to-door sales; mail, catalog and internet order, including online farmers' markets and online grocery delivery; religious or other organization bazaars; and State and local fairs.

(3) For the purposes of this definition, ''farm-operated business'' means a business that is managed by one or more farms and conducts manufacturing/processing not on the farm(s).

Shipping means an event in a food's supply chain in which a food is arranged for transport (*e.g.,* by truck or ship) from a defined location to another defined location at a different farm, a first receiver, or a subsequent receiver. Shipping does not include the sale or shipment of a food directly to a

consumer or the donation of surplus food.

Traceability lot means a lot of food that has been originated, transformed, or created.

Traceability lot code means a descriptor, often alphanumeric, used to identify a traceability lot.

Traceability lot code generator means the person who assigns a traceability lot code to a product.

Traceability product description means a description of a food product typically used commercially for purchasing, stocking, or selling, and includes the category code or term, category name, and trade description. For single-ingredient products, the trade description includes the brand name, commodity, variety, packaging size, and packaging style. For multiple-ingredient food products, the trade description includes the brand name, product name, packaging size, and packaging style.

Traceability product identifier means a unique identification code (such as an alphanumeric code) that an entity assigns to designate a specific type of food product.

Transformation means an event in a food's supply chain that involves changing a food on the Food Traceability List, its package, and/or its label (regarding the traceability lot code or traceability product identifier), such as by combining ingredients or processing a food (*e.g.,* by cutting, cooking, commingling, repacking, or repackaging). Transformation does not include the initial packing of a single-ingredient food or creating a food.

Transporter means a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food, whether by road, rail, water, or air.

Vessel identification number means the number assigned to a fishing vessel by the International Maritime Organization, or by any entity or organization, for the purpose of uniquely identifying the vessel.

You means a person subject to this subpart under § 1.1300.

Traceability Program Records

§ 1.1315 What traceability program records must I have for foods on the Food Traceability List that I manufacture, process, pack, or hold?

(a) If you are subject to the requirements in this subpart, you must establish and maintain records containing the following information:

(1) A description of the reference records in which you maintain the information required under this subpart, an explanation of where on the records the required information appears, and, if applicable, a description of how reference records for different tracing events for a food (*e.g.,* receipt, transformation, shipment) are linked;

(2) A list of foods on the Food Traceability List that you ship, including the traceability product identifier and traceability product description for each food;

(3) A description of how you establish and assign traceability lot codes to foods on the Food Traceability List you originate, transform, or create, if applicable; and

(4) Any other information needed to understand the data provided within any records required by this subpart, such as internal or external coding systems, glossaries, and abbreviations.

(b) You must retain the records required under paragraph (a) of this section for 2 years after their use is discontinued (*e.g.,* because you change the records in which you maintain required information, you update the list of foods on the Food Traceability List that you ship, or you change your procedures for establishing and assigning traceability lot codes).

§ 1.1320 When must I establish and assign traceability lot codes to foods on the Food Traceability List?

(a) You must establish and assign a traceability lot code when you originate, transform, or create a food on the Food Traceability List.

(b) Except as specified otherwise in this subpart, you may not establish a new traceability lot code when you conduct other activities (*e.g.,* shipping, receiving) in the supply chain for a food on the Food Traceability List.

Records of Growing, Receiving, Transforming, Creating, and Shipping Food

§ 1.1325 What records must I keep when I grow a food on the Food Traceability List?

For each food on the Food Traceability List that you grow, you must establish and maintain records containing and linking the traceability lot code of the food to the following information:

(a) The growing area coordinates; and

(b) For growers of sprouts, the following information (if applicable):

(1) The location identifier and location description of the grower of seeds for sprouting, the associated seed lot code assigned by the seed grower, and the date of seed harvesting;

(2) The location identifier and location description of the seed conditioner or processor, the associated seed lot code assigned by the seed conditioner or processor, and the date of conditioning or processing;

(3) The location identifier and location description of the seed packinghouse (including any repackers, if applicable), the associated seed lot code assigned by the seed packinghouse, and the date of packing (and of repacking, if applicable);

(4) The location identifier and location description of the seed supplier;

(5) A description of the seeds, including the seed type or taxonomic name, growing specifications, volume, type of packaging, and antimicrobial treatment;

(6) The seed lot code assigned by the seed supplier, including the master lot and sub-lot codes, and any new seed lot code assigned by the sprouter;

(7) The date of receipt of the seeds by the sprouter; and

(8) For each lot code for seeds received by the sprouter, the sprout traceability lot code(s) and the date(s) of production associated with that seed lot code.

§ 1.1330 What records must I keep when I am the first receiver of a food on the Food Traceability List?

(a) Except as specified in paragraph (b) of this section, in addition to the records of receipt of foods required under § 1.1335, the first receiver of a food on the Food Traceability List must establish and maintain records containing and linking the traceability lot code of the food received to the following information:

(1) The location identifier and location description of the originator of the food;

(2) The business name, point of contact, and phone number of the harvester of the food, and the date(s) and time(s) of harvesting;

(3) The location identifier and location description of the place where the food was cooled, and the date and time of cooling (if applicable); and

(4) The location identifier and location description of the place where the food was packed, and the date and time of packing.

(b) If you are the first receiver of a seafood product on the Food Traceability List that was obtained from a fishing vessel, in addition to the records of receipt of foods required under § 1.1335, you must establish and maintain records containing and linking the traceability lot code of the seafood product received to the harvest date range and locations (National Marine Fisheries Service Ocean Geographic Code or geographical coordinates) for the trip during which the seafood was caught.

(c) If you are the first receiver of a food on the Food Traceability List to

which the originator of the food has not assigned a traceability lot code, you must establish a traceability lot code for the food and maintain a record of the traceability lot code linked to the information specified in paragraph (a) or (b) of this section (as applicable to the type of food received).

§ 1.1335 What records must I keep when I receive a food on the Food Traceability List?

For each food on the Food Traceability List you receive, you must establish and maintain records containing and linking the traceability lot code of the food to the following information:

(a) The location identifier and location description for the immediate previous source (other than a transporter) of the food;

(b) The entry number(s) assigned to the food (if the food is imported);

(c) The location identifier and location description of where the food was received, and date and time you received the food;

(d) The quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds);

(e) The traceability product identifier and traceability product description for the food;

(f) The location identifier, location description, and point of contact for the traceability lot code generator;

(g) The reference record type(s) and reference record number(s) (*e.g.,* ''Invoice 750A,'' ''BOL 042520 XYZ'') for the document(s) containing the information specified in paragraphs (a) through (f) of this section; and

(h) The name of the transporter who transported the food to you.

§ 1.1340 What records must I keep when I transform a food on the Food Traceability List?

(a) Except as specified in paragraph (b) of this section, for each new traceability lot of food produced through transformation you must establish and maintain records containing and linking the new traceability lot code of the food produced through transformation to the following information:

(1) For the food(s) on the Food Traceability List used in transformation, the following information:

(i) The traceability lot code(s) for the food;

(ii) The traceability product identifier and traceability product description for the food to which the traceability lot code applies; and

(iii) The quantity of each traceability lot of the food.

(2) For the food produced through transformation, the following information:

(i) The location identifier and location description for where you transformed the food (*e.g.,* by a manufacturing/processing step), and the date transformation was completed;

(ii) The new traceability product identifier and traceability product description for the food to which the new traceability lot code applies; and

(iii) The quantity and unit of measure of the food for each new traceability lot code (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds).

(3) The reference record type(s) and reference record number(s) (*e.g.,* ''Production Log 123,'' ''Batch Log 01202021'') for the document(s) containing the information specified in paragraphs (a)(1) and (2) of this section.

(b) Paragraph (a) of this section does not apply to retail food establishments with respect to foods they do not ship (*e.g.,* foods they sell or send directly to consumers).

§ 1.1345 What records must I keep when I create a food on the Food Traceability List?

(a) Except as specified in paragraph (b) of this section, for each food on the Food Traceability List you create, you must establish and maintain records containing and linking the traceability lot code of the food created to the following information:

(1) The location identifier and location description for where you created the food (*e.g.,* by a manufacturing/processing step), and the date creation was completed;

(2) The traceability product identifier and traceability product description for the food;

(3) The quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds); and

(4) The reference record type(s) and reference record number(s) (*e.g.,* ''Production Log 123,'' ''Batch Log 01202021'') for the document(s) containing the information specified in paragraphs (a)(1) through (3) of this section.

(b) Paragraph (a) of this section does not apply to retail food establishments with respect to foods they do not ship (*e.g.,* foods they sell or send directly to consumers).

§ 1.1350 What records must I keep and send when I ship a food on the Food Traceability List?

(a) For each food on the Food Traceability List you ship, you must establish and maintain records containing and linking the traceability lot code of the food to the following information:

(1) The entry number(s) assigned to the food (if the food is imported);

(2) The quantity and unit of measure of the food (*e.g.,* 6 cases, 25 returnable plastic containers, 100 tanks, 200 pounds);

(3) The traceability product identifier and traceability product description for the food;

(4) The location identifier, location description, and point of contact for the traceability lot code generator;

(5) The location identifier and location description for the immediate subsequent recipient (other than a transporter) of the food;

(6) The location identifier and location description for the location from which you shipped the food, and date and time you shipped the food;

(7) The reference record type(s) and reference record number(s) (*e.g.,* ''BOL No. 123,'' ''ASN 10212025'') for the document(s) containing the information specified in paragraphs (a)(1) through (a)(6) of this section; and

(8) The name of the transporter who transported the food from you.

(b) You must send records (in electronic or other written form) containing the following information to the immediate subsequent recipient (other than a transporter) of each traceability lot that you ship:

(1) The information in paragraphs (a)(1) through (6) of this section; and

(2) If you are a farm, the following information (if applicable) for each traceability lot of the food:

(i) A statement that you are a farm;

(ii) The location identifier and location description of the originator of the food (if not you);

(iii) The business name, point of contact, and phone number of the harvester of the food (if not you), and the date(s) and time(s) of harvesting;

(iv) The location identifier and location description of the place where the food was cooled (if not by you), and the date and time of cooling; and

(v) The location identifier and location description of the place where the food was packed (if not by you), and the date and time of packing.

Special Requirements for Certain Persons and Foods

§ 1.1355 What recordkeeping requirements apply to foods on the Food Traceability List that are subjected to a kill step?

(a) If you apply a kill step to a food on the Food Traceability List, the requirements of this subpart do not apply to your subsequent shipping of the food, provided that you maintain a

record of your application of the kill step.

(b) If you receive a food on the Food Traceability List that has been subjected to a kill step, the requirements of this subpart do not apply to your receipt or subsequent transformation and/or shipping of the food.

Procedures for Modified Requirements and Exemptions

§ 1.1360 Under what circumstances will FDA modify the requirements in this subpart that apply to a food or type of entity or exempt a food or type of entity from the requirements of this subpart?

(a) *General.* Except as specified in paragraph (b) of this section, FDA will modify the requirements of this subpart applicable to a food or type of entity, or exempt a food or type of entity from the requirements of this subpart, when we determine that application of the requirements that would otherwise apply to the food or type of entity is not necessary to protect the public health.

(b) *Registered facilities.* If a person to whom modified requirements or an exemption applies under paragraph (a) of this section (including a person who manufactures, processes, packs, or holds a food to which modified requirements or an exemption applies under paragraph (a) of this section) is required to register with FDA under section 415 of the Federal Food, Drug, and Cosmetic Act (and in accordance with the requirements of subpart H of this part) with respect to the manufacturing, processing, packing, or holding of the applicable food, such person must maintain records identifying the immediate previous source of such food and the immediate subsequent recipient of such food in accordance with §§ 1.337 and 1.345. Such records must be maintained for 2 years.

§ 1.1365 When will FDA consider whether to adopt modified requirements or grant an exemption from the requirements of this subpart?

FDA will consider modifying the requirements of this subpart applicable to a food or type of entity, or exempting a food or type of entity from the requirements of this subpart, on our own initiative or in response to a citizen petition submitted under § 10.30 of this chapter by any interested party.

§ 1.1370 What must be included in a petition requesting modified requirements or an exemption from the requirements?

In addition to meeting the requirements on the content and format of a citizen petition in § 10.30 of this chapter, a petition requesting modified requirements or an exemption from the requirements of this subpart must:

(a) Specify the food or type of entity to which the modified requirements or exemption would apply;

(b) If the petition requests modified requirements, specify the proposed modifications to the requirements of this subpart; and

(c) Present information demonstrating why application of the requirements requested to be modified or from which exemption is requested is not necessary to protect the public health.

§ 1.1375 What information submitted in a petition requesting modified requirements or an exemption, or information in comments on such a petition, is publicly available?

FDA will presume that information submitted in a petition requesting modified requirements or an exemption, as well as information in comments submitted on such a petition, does not contain information exempt from public disclosure under part 20 of this chapter and will be made public as part of the docket associated with the petition.

§ 1.1380 What process applies to a petition requesting modified requirements or an exemption?

(a) In general, the procedures set forth in § 10.30 of this chapter govern FDA's response to a petition requesting modified requirements or an exemption. An interested person may submit comments on such a petition in accordance with § 10.30(d) of this chapter.

(b) Under § 10.30(h)(3) of this chapter, FDA will publish a notification in the **Federal Register** requesting information and views on a submitted petition, including information and views from persons who could be affected by the modified requirements or exemption if we granted the petition.

(c) Under § 10.30(e)(3) of this chapter, we will respond to the petitioner in writing, as follows:

(1) If we grant the petition either in whole or in part, we will publish a notification in the **Federal Register** setting forth any modified requirements or exemptions and the reasons for them.

(2) If we deny the petition (including a partial denial), our written response to the petitioner will explain the reasons for the denial.

(d) We will make readily accessible to the public, and periodically update, a list of petitions requesting modified requirements or exemptions, including the status of each petition (for example, pending, granted, or denied).

§ 1.1385 What process will FDA follow when adopting modified requirements or granting an exemption on our own initiative?

(a) If FDA, on our own initiative, determines that adopting modified requirements or granting an exemption from the requirements for a food or type of entity is appropriate, we will publish a notification in the **Federal Register** setting forth the proposed modified requirements or exemption and the reasons for the proposal. The notification will establish a public docket so that interested persons may submit written comments on the proposal.

(b) After considering any comments timely submitted, we will publish a notification in the **Federal Register** stating whether we are adopting modified requirements or granting an exemption, and the reasons for our decision.

§ 1.1390 When will modified requirements that we adopt or an exemption that we grant become effective?

Any modified requirements that FDA adopts or exemption that we grant will become effective on the date that notice of the modified requirements or exemption is published in the **Federal Register**, unless otherwise stated in the notification.

§ 1.1395 Under what circumstances may FDA revise or revoke modified requirements or an exemption?

FDA may revise or revoke modified requirements or an exemption if we determine that such revision or revocation is necessary to protect the public health.

§ 1.1400 What procedures apply if FDA tentatively determines that modified requirements or an exemption should be revised or revoked?

(a) If FDA tentatively determines that we should revise or revoke modified requirements or an exemption, we will provide the following notifications:

(1) We will notify the person that originally requested the modified requirements or exemption (if we adopted modified requirements or granted an exemption in response to a petition) in writing at the address identified in the petition; and

(2) We will publish notification in the **Federal Register** of our tentative determination that the modified requirements or exemption should be revised or revoked and the reasons for our tentative decision. The notification will establish a public docket so that interested persons may submit written comments on our tentative determination.

(b) After considering any comments timely submitted, we will publish notification in the **Federal Register** of our decision whether to revise or revoke the modified requirements or exemption and the reasons for the decision. If we do revise or revoke the modified requirements or exemption, the effective date of the decision will be 1 year after the date of publication of the notification, unless otherwise stated in the notification.

Waivers

§ 1.1405 Under what circumstances will FDA waive one or more of the requirements of this subpart for an individual entity or a type of entity?

FDA will waive one or more of the requirements of this subpart when we determine that:

(a) Application of the requirements would result in an economic hardship for an individual entity or a type of entity, due to the unique circumstances of the individual entity or type of entity;

(b) The waiver will not significantly impair our ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act; and

(c) The waiver will not otherwise be contrary to the public interest.

§ 1.1410 When will FDA consider whether to waive a requirement of this subpart?

FDA will consider whether to waive a requirement of this subpart on our own initiative or in response to the following:

(a) A written request for a waiver for an individual entity; or

(b) A citizen petition requesting a waiver for a type of entity submitted under § 10.30 of this chapter by any person subject to the requirements of this subpart.

§ 1.1415 How may I request a waiver for an individual entity?

You may request a waiver of one or more requirements of this subpart for an individual entity by submitting a written request to the Food and Drug Administration. The request for a waiver must include the following:

(a) The name, address, and point of contact of the individual entity to which the waiver would apply;

(b) The requirements of this subpart to which the waiver would apply;

(c) Information demonstrating why application of the requirements requested to be waived would result in an economic hardship for the entity, including information about the unique circumstances faced by the entity that result in unusual economic hardship from the application of these requirements;

(d) Information demonstrating why the waiver will not significantly impair FDA's ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act; and

(e) Information demonstrating why the waiver would not otherwise be contrary to the public interest.

§ 1.1420 What process applies to a request for a waiver for an individual entity?

(a) After considering the information submitted in a request for a waiver for an individual entity, we will respond in writing to the person that submitted the waiver request stating whether we are granting the waiver (in whole or in part) and the reasons for the decision.

(b) Any waiver for an individual entity that FDA grants will become effective on the date we issue our response to the waiver request, unless otherwise stated in the response.

§ 1.1425 What must be included in a petition requesting a waiver for a type of entity?

In addition to meeting the requirements on the content and format of a citizen petition in § 10.30 of this chapter, a petition requesting a waiver for a type of entity must:

(a) Specify the type of entity to which the waiver would apply and the requirements of this subpart to which the waiver would apply;

(b) Present information demonstrating why application of the requirements requested to be waived would result in an economic hardship for the type of entity, including information about the unique circumstances faced by the type of entity that result in unusual economic hardship from the application of these requirements;

(c) Present information demonstrating why the waiver will not significantly impair FDA's ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act; and

(d) Present information demonstrating why the waiver would not otherwise be contrary to the public interest.

§ 1.1430 What information submitted in a petition requesting a waiver for a type of entity, or information in comments on such a petition, is publicly available?

FDA will presume that information submitted in a petition requesting a waiver for a type of entity, as well as information in comments submitted on such a petition, does not contain information exempt from public disclosure under part 20 of this chapter and will be made public as part of the docket associated with the petition.

§ 1.1435 What process applies to a petition requesting a waiver for a type of entity?

(a) In general, the procedures set forth in § 10.30 of this chapter govern FDA's response to a petition requesting a waiver. An interested person may submit comments on such a petition in accordance with § 10.30(d) of this chapter.

(b) Under § 10.30(h)(3) of this chapter, FDA will publish a notification in the **Federal Register** requesting information and views on a submitted petition requesting a waiver for a type of entity, including information and views from persons who could be affected by the waiver if we granted the petition.

(c) Under § 10.30(e)(3) of this chapter, we will respond to the petitioner in writing, as follows:

(1) If we grant the petition either in whole or in part, we will publish a notification in the **Federal Register** setting forth any requirements we have waived and the reasons for the waiver.

(2) If we deny the petition (including a partial denial), our written response to the petitioner will explain the reasons for the denial.

(d) We will make readily accessible to the public, and periodically update, a list of petitions requesting waivers for types of entities, including the status of each petition (for example, pending, granted, or denied).

§ 1.1440 What process will FDA follow when waiving a requirement of this subpart on our own initiative?

(a) If FDA, on our own initiative, determines that a waiver of one or more requirements for an individual entity or type of entity is appropriate, we will publish a notification in the **Federal Register** setting forth the proposed

waiver and the reasons for such waiver. The notification will establish a public docket so that interested persons may submit written comments on the proposal.

(b) After considering any comments timely submitted, we will publish a document in the **Federal Register** stating whether we are granting the waiver (in whole or in part) and the reasons for our decision.

(c) Any waiver for a type of entity that FDA grants will become effective on the date that notice of the waiver is published in the **Federal Register**, unless otherwise stated in the notification.

§ 1.1445 Under what circumstances may FDA modify or revoke a waiver?

FDA may modify or revoke a waiver if we determine that:

(a) Compliance with the waived requirements would no longer impose a unique economic hardship on the individual entity or type of entity to which the waiver applies;

(b) The waiver could significantly impair our ability to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak or to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act; or

(c) The waiver is otherwise contrary to the public interest.

§ 1.1450 What procedures apply if FDA tentatively determines that a waiver should be modified or revoked?

(a) *Waiver for an individual entity.* (1) If FDA tentatively determines that we should modify or revoke a waiver for an individual entity, we will notify the person that had received the waiver in writing of our tentative determination that the waiver should be modified or revoked. The notice will provide the waiver recipient 60 days in which to submit information stating why the waiver should not be modified or revoked.

(2) Upon consideration of any information submitted by the waiver recipient, we will respond in writing stating our decision whether to modify or revoke the waiver and the reasons for the decision. If we modify or revoke the waiver, the effective date of the decision will be 1 year after the date of our response to the waiver recipient, unless otherwise stated in the response.

(b) *Waiver for a type of entity.* (1) If FDA tentatively determines that we should modify or revoke a waiver for a type of entity, we will provide the following notifications:

(i) We will notify the person that originally requested the waiver (if we granted the waiver in response to a petition) in writing at the address identified in the petition.

(ii) We will publish notification in the **Federal Register** of our tentative determination that the waiver should be modified or revoked and the reasons for our tentative decision. The notification will establish a public docket so that interested persons may submit written comments on our tentative determination.

(2) After considering any comments timely submitted, we will publish notification in the **Federal Register** of our decision whether to modify or revoke the waiver and the reasons for the decision. If we do modify or revoke the waiver, the effective date of the decision will be 1 year after the date of publication of the notification, unless otherwise stated in the notification.

Records Maintenance and Availability

§ 1.1455 How must records required by this subpart be maintained?

(a) *General requirements for records.* (1) You must keep records as original paper or electronic records or true copies (such as photocopies, pictures, scanned copies, or other accurate reproductions of the original records).

(2) All records must be legible and stored to prevent deterioration or loss.

(b) *Record availability.* (1) You must make all records required under this subpart available to an authorized FDA representative as soon as possible but not later than 24 hours after the request.

(2) Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location.

(3) When necessary to help FDA prevent or mitigate a foodborne illness outbreak, or to assist in the implementation of a recall, or to otherwise address a threat to the public health, including but not limited to situations where FDA has a reasonable belief that an article of food (and any other article of food that FDA reasonably believes is likely to be affected in a similar manner) presents a threat of serious adverse health consequences or death to humans or animals as a result of the food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of the Federal Food, Drug, and Cosmetic Act, you must make available, within 24 hours of request by an authorized FDA representative, an electronic sortable spreadsheet containing the information in the records you are required to maintain under this subpart, for the foods and date ranges specified in the request. FDA will withdraw a request for such a spreadsheet when necessary to accommodate a religious belief of a person asked to provide such a spreadsheet.

(4) Upon FDA request, you must provide within a reasonable time an English translation of records maintained in a language other than English.

(c) *Record retention.* Except as specified otherwise in this subpart, you must maintain records containing the information required by this subpart for 2 years from the date you created the records.

(d) *Electronic records.* Records that are established or maintained to satisfy the requirements of this subpart and that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this subpart, but that also are required under other applicable statutory provisions or regulations, remain subject to part 11, if not otherwise exempt.

(e) *Use of existing records.* You do not need to duplicate existing records you have (*e.g.,* records that you keep in the ordinary course of business or that you maintain to comply with other Federal, State, Tribal, territorial, or local regulations) if they contain the information required by this subpart. You may supplement any such existing records as necessary to include all of the information required by this subpart. In addition, you do not have to keep all of the information required by this subpart in one set of records. However, you must indicate the different records in which you keep this information in accordance with § 1.1315(a).

Consequences of Failure To Comply

§ 1.1460 What consequences could result from failing to comply with the requirements of this subpart?

(a) *Prohibited act.* The violation of any recordkeeping requirement under section 204 of the FDA Food Safety Modernization Act, including the violation of any requirement of this subpart, is prohibited under section 301(e) of the Federal Food, Drug, and Cosmetic Act, except when such violation is committed by a farm.

(b) *Refusal of admission.* An article of food is subject to refusal of admission

under section 801(a)(4) of the Federal Food, Drug, and Cosmetic Act if it appears that the recordkeeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of that section), including the requirements of this subpart, have not been complied with regarding such article.

Updating the Food Traceability List

§ 1.1465 How will FDA update the Food Traceability List?

(a) When FDA tentatively concludes, in accordance with section 204(d)(2) of the FDA Food Safety Modernization Act, that it is appropriate to revise the Food Traceability List, we will publish a notice in the **Federal Register** stating the proposed changes to the list and the reasons for these changes and requesting information and views on the proposed changes.

(b) After considering any information and views submitted on the proposed changes to the Food Traceability List, FDA will publish a notice in the **Federal Register** stating whether we are making any changes to the list and the reasons for the decision. If FDA revises the list, we will also publish the revised list on our website.

(c) When FDA updates the Food Traceability List in accordance with this section, any deletions from the list will become effective immediately. Any additions to the list will become effective 1 year after the date of publication of the **Federal Register** notice announcing the revised list, unless otherwise stated in the notice.

Dated: September 8, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–20100 Filed 9–21–20; 11:15 am]

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FEDERAL REGISTER

Vol. 85 Wednesday,
No. 185 September 23, 2020

Part V

The President

Federal Register
Vol. 85, No. 185
Wednesday, September 23, 2020

Presidential Documents

Title 3—

The President

Proclamation 10076 of September 14, 2020

National Hispanic Heritage Month, 2020

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Month, we celebrate the countless contributions of more than 60 million Hispanic Americans to our culture and society. Hispanic Americans are the largest minority group in the United States today, and generations of Hispanic Americans have consistently helped make our country strong and prosperous. They contribute to our Nation beyond description. Hispanic Americans embody the best of our American values, including commitment to faith, family, and country. They serve in our military and protect us as members of law enforcement. In fact, Hispanic Americans make up half of our Border Patrol agents. The Hispanic-American community has left an indelible mark on our government, culture, and economy.

As part of our commitment to promoting the success of Hispanic Americans, my Administration will always promote educational opportunity for our Nation's Hispanic-American communities. Hispanic Americans benefit greatly from school choice programs, including the Nation's largest school choice program in Florida, where more than one-third of the recipients are Hispanic-American students. No American student should ever be trapped in a failing public school or a school that does not meet his individual needs. Additionally, we have spurred the creation of more than 16 million education and training opportunities through our Pledge to the American Worker.

My Administration is also working to increase economic opportunities for Hispanic Americans by providing pathways to in-demand jobs and investing in Hispanic-American communities. On July 9, 2020, I signed an Executive Order to establish the White House Hispanic Prosperity Initiative to promote educational and workforce development, encourage private-sector action and public-private partnerships, and to monitor how Federal programs best provide opportunities for Hispanic Americans. Additionally, this Executive Order established the President's Advisory Commission on Hispanic Prosperity, which is dedicated to advising my Administration on ways to improve access to educational and economic opportunities for the Hispanic-American community. This year, my Administration also delivered $1 billion in funding to Minority-Serving Institutions, including Hispanic-Serving Institutions. And since I signed the Tax Cuts and Jobs Act of 2017 into law, nearly 9,000 Opportunity Zones have attracted an estimated $75 billion in new capital investment in economically distressed areas, helping to bring wealth and jobs to the neighborhoods where many Hispanic Americans live.

We are already seeing the positive results of these policies in communities throughout the United States. In the 2017–2018 academic year, the graduation rate for Hispanic students at public high schools rose to 81%, the highest level ever recorded. Before the coronavirus pandemic, the median income for Hispanic Americans had reached its highest level in history. Unemployment reached the lowest rate ever recorded. The poverty rate for Hispanic Americans also hit a record low. And from 2017 to 2018, 362,000 Hispanic Americans became new homeowners, the largest net gain for Hispanics since 2005. In the past 4 months as we have recovered from the coronavirus, we added 3.3 million jobs for Hispanic Americans. It is my promise to

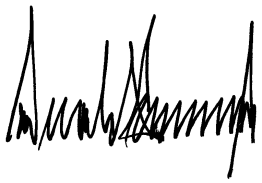
the Hispanic-American community and to all Americans that my Administration will continue to do everything in its power to rebuild the economy, ensure opportunity, grow wages, and cut regulations so every family can achieve their own American Dream.

Hispanic Americans will play an incredible role in our country's great years to come, and my Administration proudly stands with them. Their steadfast commitment to America's core values, their steadfast opposition to socialism, and their innumerable contributions to our prosperity enrich our Nation and add to our unmatched culture and way of life.

To honor the achievements of Hispanic Americans, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 15 through October 15, 2020, as National Hispanic Heritage Month. I call on public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2020–21159
Filed 9–22–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Executive Order 13949 of September 21, 2020

Blocking Property of Certain Persons With Respect to the Conventional Arms Activities of Iran

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Countering America's Adversaries Through Sanctions Act (Public Law 115–44), the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, DONALD J. TRUMP, President of the United States of America, find that:

It remains the policy of the United States to counter Iran's malign influence in the Middle East, including transfers from Iran of destabilizing conventional weapons and acquisition of arms and related materiel by Iran. Transfers to and from Iran of arms or related materiel or military equipment represent a continuing threat to regional and international security—as evidenced by Iran's continued military support that fuels ongoing conflict in Syria, Lebanon, Iraq, and Yemen. Iran benefits from engaging in the conventional arms trade by strengthening its relationships with other outlier regimes, lessening its international isolation, and deriving revenue that it uses to support terror groups and fund malign activities. In light of these findings and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995 (Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources), I hereby order:

Section. 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to engage in any activity that materially contributes to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of arms or related materiel, including spare parts;

(ii) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to provide to Iran any technical training, financial resources or services, advice, other services, or assistance related to the supply, sale, transfer, manufacture, maintenance, or use of arms and related materiel described in subsection (a)(i) of this section;

(iii) any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to have engaged, or attempted to engage, in any activity that materially contributes to, or poses a risk of materially contributing to, the proliferation of arms or related materiel or items intended for military end-uses or military end-users, including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by the Government of Iran (including persons owned or controlled by, or acting for or on behalf of the Government of Iran) or paramilitary organizations financially or militarily supported by the Government of Iran;

(iv) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(v) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

(c) The prohibitions in subsection (a) of this section do not apply to property and interests in property of the Government of Iran that were blocked pursuant to Executive Order 12170 of November 14, 1979 (Blocking Iranian Government Property), and thereafter made subject to the transfer directives set forth in Executive Order 12281 of January 19, 1981 (Direction to Transfer Certain Iranian Government Assets), and implementing regulations thereunder.

Sec. 2. The prohibitions in section 1 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 3. The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except where the Secretary of State determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives. In exercising this responsibility, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security. Such persons shall be treated in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions). The Secretary of State shall have the responsibility for implementing this section pursuant to such conditions and procedures as the Secretary of State has established or may establish pursuant to Proclamation 8693.

Sec. 4. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 5. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 6. For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''Government of Iran'' includes the Government of Iran; any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran; and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(c) the term ''Iran'' means the Government of Iran and the territory of Iran;

(d) the term ''person'' means an individual or entity; and

(e) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All departments and agencies of the United States shall take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. This order shall not apply with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine, or medical devices to Iran.

Sec. 10. Nothing in this order shall prohibit transactions for the conduct of the official business of the United States Government or the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

Sec. 11. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

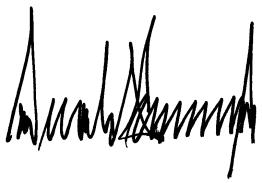
Sec. 12. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 21, 2020.

[FR Doc. 2020–21160
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